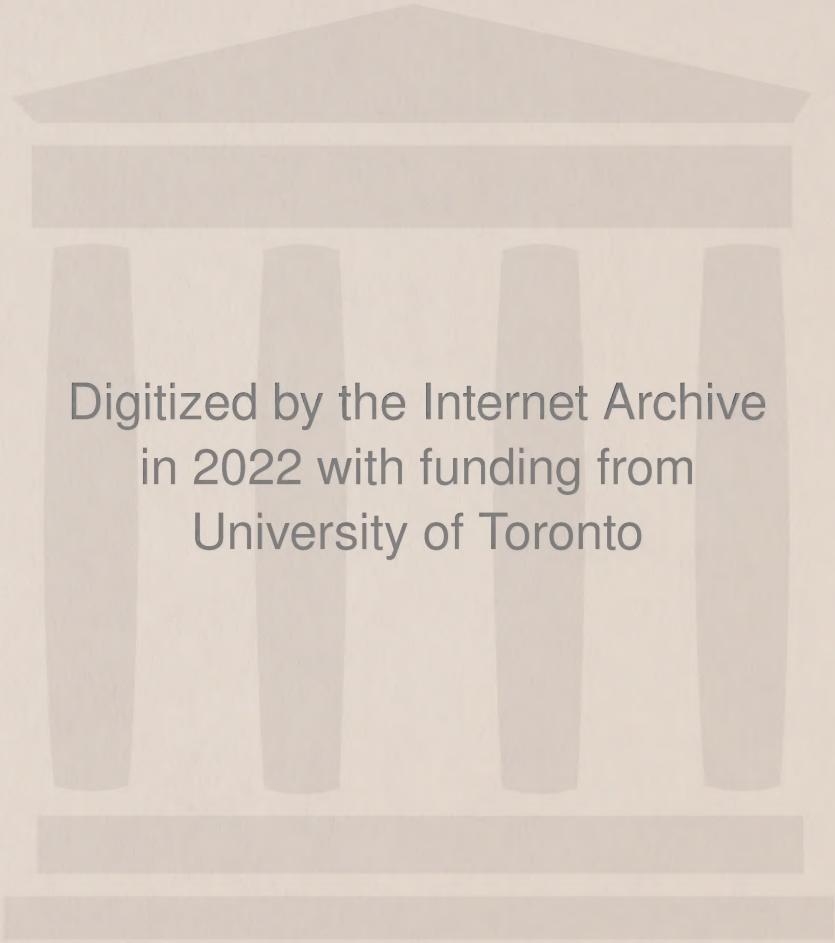

CA2ON XC12 -S78

For subsequent Proceedings on Education Amendment Act (S6 -)

SEE

CA2ON
XC 12
-S77

33rd Parl.,
2nd sess.

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

ORGANIZATION

MONDAY, APRIL 28, 1986

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Jonnston, R. F. (Scarborough West NDP)
VICE-CHAIRMAN: Cooke, D. S. (Windsor-Riverside NDP)
Bernier, L. (Kenora PC)
Davis, W. C. (Scarborough Centre PC)
Jackson, C. (Burlington South PC)
Miller, G. I. (Haldimand-Norfolk L)
Offer, S. (Mississauga North L)
Reycraft, D. R. (Middlesex L)
Stephenson, B. M. (York Mills PC)
Swart, M. L. (Welland-Thorold NDP)
Ward, C. C. (Wentworth North L)

Clerk: Carrozza, F.

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday, April 28, 1986

The committee met at 3:45 p.m. in room 228.

ORGANIZATION

Clerk of the Committee: Our duty is to elect a new chairman. Can I have nominations, please. Mr. Jackson?

Mr. Jackson: I nominate Richard Johnston.

Clerk of the Committee: Thank you. Any other nominations? I call upon Mr. Johnston who has been elected chairman.

Mr. Chairman: Thank you, Mr. Jackson. I appreciate that. The cheque is in the mail.

The next order of business is the election of the vice-chairman.

Mr. D. S. Cooke: I nominate David Reville.

Mr. Chairman: Further nominations? Nominations are closed. Are you willing to stand, Mr. Reville?

Mr. Reville: Yes.

Mr. Chairman: Excellent. We should nominate our select quality subcommittee. Somebody should do some steering. Could we have names from each caucus? Mr. Ward? Mr. Reycraft from the Liberals. Mr. Davis? Mr. Andrewes from the Conservatives. Mr. Reville?

Mr. Reville: I have to talk to Mr. Cooke first. I will cede it to you, Mr. Cooke.

Mr. D. S. Cooke: No.

Mr. Chairman: That will constitute the subcommittee, and I will be there as the chairman. The clerk will attend all meetings. We have made it flexible in terms of attendance at past meetings and have turned some of our steering committee meetings into full meetings of the committee when we felt that was appropriate. I would like to keep that flexibility if I can.

I need a motion that transcripts be made for our meetings. Mr. Jackson so moves. All those in favour? All those opposed?

Motion agreed to.

Mr. Chairman: We welcome new members, Mr. Baetz and Mr. Andrewes, to our midst, our happy throng. Our agenda at this time is to continue with Bills 54 and 55 and then to move on to Bill 94 and then to Bill 30. That was the latest decision by the committee.

Miss Stephenson: When was that decision made?

Mr. Chairman: I am not sure of the exact date. There was a motion in the week of April 9.

Miss Stephenson: The motion I recall was that we would go back to Bills 54 and 55 because the minister had pulled Bill 30. We did not expand the agenda beyond that.

3:50 p.m.

Mr. Chairman: There was a subsequent motion at a time when you were not with us. I cannot remember the exact date.

Mr. Jackson: That was my motion, which had to do with eliminating public debate, but not with finishing Bill 94 or any other references.

Mr. Chairman: There was a further one moved by Mr. Cooke, as I recall, and carried.

Mr. Jackson: I would like to see a copy of that.

Miss Stephenson: I do not have a copy of that motion.

Mr. Chairman: I would be happy to do that.

Miss Stephenson: I believe that was not determined by the committee.

Mr. Chairman: It definitely was, but we do not need to order our business today because there has been some communication difficulty between me and the minister's office regarding our organization for today. That is something we can easily bring up following our discussions tomorrow when we get back to Bills 54 and 55.

For the benefit of the new members of the committee, there is still a fair amount to do on Bill 54. There is the whole question of how the basic pricing system will be established as well as what will be in the regulations. We also have to go back over some other matters on Bill 54 before we get to Bill 55. We can easily deal with that tomorrow.

Mr. Andrewes: Can we attempt to deal with Bills 54 and 55 today?

Mr. Chairman: No. I will explain the problem that occurred. In a discussion with Mr. Ward, I understood the Minister of Health (Mr. Elston) was not going to be here and Mr. Ward might have been taken up in the throne debate, if we had not had the emergency debate today. There was confusion about whether we were going to sit without the minister, who has to be in Ottawa for a health ministers' meeting.

I thought we were going ahead, but the message was left that we were not. The deputy and Dr. Psutka were not made available, so we had neither the senior staff nor the minister here as a result of the miscommunication. We are much better off leaving it until tomorrow.

Mr. Jackson: We might have made a tremendous amount of progress.

Mr. Chairman: Any other comments?

Mr. Keycraft: I attempted to speak earlier when we were discussing the order of business. I believe you are correct in saying a resolution was

passed by the standing committee two weeks ago stating that we would proceed to Bill 94 after Bills 54 and 55 were completed. I am not sure about procedure, but I assume that was the action of another committee and would require reaffirmation by this one.

At the time we supported that ordering of business, it was our anticipation that Bills 54 and 55 would be completed by now. The Minister of Education (Mr. Conway) has indicated to me some concern on his part about the length of time it appears to be going to take us to get to Bill 30 if we follow that procedure.

We are now approaching May 1, and school boards are in a position to make decisions about staffing and accommodating classes. In the light of the proposed amendments announced by the government last week, there is a need to eliminate doubts with respect to a number of significant issues associated with Bill 30.

Mr. Chairman: Mr. Reycraft moves that the ordering of business be referred to the steering committee as soon as possible, and by the end of this week at the latest.

Mr. Reville: Mr. Reycraft is correct. On April 15, a motion was passed, supported by the Liberal and New Democratic Party members of the committee, to move to Bill 94 at the conclusion of Bills 54 and 55. I agree with Mr. Reycraft that the expectation at that time was that Bills 54 and 55 would be completed by now. I do not agree with the rest of his reasoning, however, that we cannot deal with Bills 54 and 55, Bill 94 and Bill 30 in a timely fashion so no one is left waiting for legislation.

I am not sure it is particularly useful to refer these matters to the steering committee again. The information the committee needs to order its business has already been before it. It would be preferable to reaffirm the agenda that had been struck by the last committee.

Mr. D. S. Cooke: I see absolutely no reason why this matter needs to be referred to the steering committee at all. If Mr. Reycraft wants to suggest today that the business should be reordered, that Bill 30 should be put before Bill 94 and that we delay the ban on extra billing for whatever amount of time it takes to deal with Bill 30, then let him say it here today; and let the Liberals say that here today. The reality is that a steering committee is put in place to deal with problems with scheduling and a whole bunch of things that have to be done to work out the appearances of groups before the committee and so forth.

There is a clear question here now. Are we going to go with Bill 94 next, after Bill 54 and 55, or are we going to do Bill 30? Speaking for our caucus, there is no reason to refer it to a steering committee. We are going to vote against your motion and we will not support it on the steering committee. It is going to come to a full vote in the committee and if you want to reconsider, we might as well do it here today. You might as well put on the record today your position, that you are backing off from Bill 94.

Mr. Jackson: I do not believe it would be productive for us to take an hour debating this when the steering committee could quite reasonably go over it. I am not as sure as Mr. Reycraft is that there was approval in this committee on April 15.

The reason I say that is because I distinctly recall Mr. Cooke engaging

in a very scathing attack on the Liberals for stalling the bill. It makes absolutely no sense in the world to me that he would have done that the same day the Liberals supported him to bring it forward on the agenda. Either I find his actions completely contradictory or I find my recollection of what we approved that day poor.

I support Mr. Reycraft's motion. As a former trustee, I am very sensitive to the issue of Bill 30. It is okay to look at Bill 94 and all its implications, but there are serious consequences to school boards with the delay of Bill 30. I tried to confine many of my comments at that time to that point. We appreciate support for Mr. Reycraft's motion and the rationale for requesting it.

Mr. Davis: I want to support Mr. Reycraft's recommendation that it goes to committee. It seems to me that since I have been on the standing committee on social development--a very short period of time, by the way; it is my anniversary in a few more days--that it was and has been the practice that those decisions were taken back to the committee for discussion. Then, when the committee had problems, it came back to the full committee. We will have no problem supporting Mr. Reycraft's decision that it goes to committee for discussion and then airing any decisions that come back.

Mr. Reycraft: If April 15 was the day the resolution was passed, we must have escaped scathing on that day because I do not remember receiving it at the time we supported that motion. I indicated earlier the reasons we did so.

In response to Mr. Cooke's suggestion, there is no backing off from the commitment to end extra billing by this government. You heard the Premier (Mr. Peterson) in question period, just a few minutes ago, reaffirm that position.

Miss Stephenson: I want to remind the members of the committee that there are certain dates within the Education Act that are nonflexible and that are of extreme importance in terms of staffing, funding and organization of schools. May 31 is looming rather rapidly, and I hope the minister is not going to be hoist on that petard this year. He is going to be really uncomfortable if he is.

Mr. Reville: He has a petard of his own.

Mr. D. S. Cooke: If that is the decision, why refer this to the steering committee?

Mr. Chairman: Let me clarify that this motion is in order. Any of our past ordering of business is that of a past committee which no longer exists. Therefore, it is up to this committee to reaffirm past decisions of another committee or to reorganize.

4 p.m.

I should not make editorial comment, but the only thing is that we have had this kind of discussion several times now with at least two different results. I sense there is a change of mood again in the committee on this--

Mr. Reville: We want binding arbitration.

Mr. Chairman: --but it is possible for us to go to a steering committee and then return with it or decide it today. That is in your hands. We will tell by your votes on this particular motion how you wish to operate.

The motion was that the ordering of business for committee be referred to the steering committee to be considered at a meeting as soon as possible, and no later than the end of this week. It has been amended since, but that is now I recall it being read.

All those in favour, please indicate. Those opposed?

Motion agreed to.

Mr. Chairman: Before we adjourn, why do we not establish a time for a steering committee meeting? Then we can comply with the request and get back to the committee as soon as possible.

Are there any other matters that you want referred to the steering committee at this point? Is there any further business?

Mr. Jackson: In the presence of the members of the public who are interested in our activities, could we have a brief overview of our schedule for this week? The steering committee will not have to address this, but will we meet tomorrow at the time on the agenda and on Thursday at the time on the agenda, and what might reasonably be anticipated for next Monday?

Mr. Chairman: We will meet under the new rules tomorrow at 3:30. That is a much more precise time under the new rules than before. We do not have a room yet, but it will be circulated in the House and it will be up on the various bulletin boards around the building as members of the public come in. We will meet until 6:30 so we will have a good three hours tomorrow, starting on Bill 54 again.

On Thursday, we will meet at the same hours in whatever room is assigned to us to continue with Bill 54 and move on to Bill 55, depending on how we are doing. Members may recall we had agreed to leave the conclusions of Bill 54 open until certain matters were arranged through the ministry and, if necessary, to go back to it after Bill 55. We may not take a final vote on Bill 54 before we move on to Bill 55, although we will have completed most of the business on it.

Next week, we also meet on Monday at 3:30. We have nine hours of committee hearings a week.

Mr. Jackson: Are there any other amendments floating around out there that have not been circulated? Are we anticipating further amendments à la Bills 54 and 55?

Mr. Chairman: Neither the clerk nor I have received any further amendments at this point on either bill. Does the parliamentary assistant know whether there may be more on Bill 55?

Mr. Ward: No, I do not think there are any substantial amendments coming forward. There might be some--

Mr. Jackson: I am nervous about the word "substantial," Mr. Ward.

Mr. Ward: In the past two weeks we have had amendment upon amendment as we continue to refine this legislation. I am not prepared to say there will be no more amendments at the end of this week.

Mr. Jackson: To your knowledge at this time, there is nothing planned, but there may be.

Mr. Ward: There may be some tidying up of some words.

Mr. Jackson: With no arbitration, I presume.

Mr. Chairman: If all members of the committee will be as dedicated to improving the legislation as they have been already, we will see many amendments.

Mr. Jackson: For the record, I simply reiterate that it is far more convenient for the clerk, the chairman and members of this committee if we can have more than five or six minutes' notice on those amendments. I would like to keep it as simple as that.

Mr. Chairman: There is no intention to bring in major amendments, as I understand it.

Mr. D. S. Cooke: Can I suggest you do whatever you can to make sure we are not in this room tomorrow? It will be very difficult to deal with all the amendments to Bills 54 and 55 here. We will be even more confused than we normally are.

Mr. Chairman: There is a real question as to whether the chandelier will still be here.

Mr. D. S. Cooke: I am not worried about that.

Mr. Chairman: We will do our best to get a committee room that is more suited to the members of this august group. If there is no further business, we will adjourn until 3:30 tomorrow. The location will be circularized.

Mr. Ward is involved in the speech from the throne, so we will obviously have to hold votes until he comes. That is 20 minutes; it is not a problem.

Steering committee members, please.

The committee adjourned at 4:05 p.m.

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

ORGANIZATION

ONTARIO DRUG BENEFIT ACT
PRESCRIPTION DRUG COST REGULATION ACT

TUESDAY, APRIL 29, 1986

STANDING COMMITTEE ON SOCIAL DEVELOPMENT
CHAIRMAN: Johnston, R. F. (Scarborough West NDP)
VICE-CHAIRMAN: Reville, D. (Riverdale NDP)
Allen, R. (Hamilton West NDP)
Andrewes, P. W. (Lincoln PC)
Baetz, R. C. (Ottawa West PC)
Davis, W. C. (Scarborough Centre PC)
Jackson, C. (Burlington South PC)
Miller, G. I. (Haldimand-Norfolk L)
Offer, S. (Mississauga North L)
Reycraft, D. R. (Middlesex L)
Ward, C. C. (Wentworth North L)

Substitutions:
Cooke, D. S. (Windsor-Riverside NDP) for Mr. Allen
Leluk, N. G. (York West PC) for Mr. Davis
Stephenson, B. M. (York Mills PC) for Mr. Andrewes

Clerk: Carrozza, F.

Staff:
Baldwin, E., Legislative Counsel

Witnesses:

From the Ministry of Health:
Bernstein, D., Director, Legal Services Branch
Burrows, A. R., Director, Drug Programs and Policy Branch
Elston, Hon. M. J., Minister of Health (Huron-Bruce L)
Psutka, Dr. D. A., Assistant Deputy Minister, Emergency Services, Laboratories and Drug Programs

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, April 29, 1986

The committee met at 3:57 p.m. in room 151.

ORGANIZATION

Mr. Chairman: I call the meeting to order.

It is hoped that as we get used to the new rules of the Legislature, the starting time will become more prompt than in the past. Today we were just getting our feet wet, and with explanations from the Speaker and so on, we went a little longer than expected. However, if we can try to get started as close as possible to 3:30, it would help us to get the maximum nine hours in a week, especially when we have so much legislation ahead of us.

The subcommittee has made a number of recommendations. Can we have these as motions to the committee? The only one we really need is the first one with regard to the ordering of our business.

Mr. Keycraft moved that the committee proceed with clause-by-clause debate of Bills 55 and 54, to be followed by Bills 30 and 94.

Motion agreed to.

Mr. Chairman: The government House leader has said that he has no problem with sitting Monday nights. I am not sure what the word is from the other two House leaders. However, we will need unanimous consent should that be the case.

Because we no longer have night sittings in the House, the only evening the House leaders are interested in our sitting extra time is Monday. That is only in extreme circumstances--for instance, when we are bogged down with a lot of appellants coming before us, or are besieged by legislation, as we are now. The only evening they will look at is Monday, and then only with consent from the House.

The group subcommittee thought we might be able to finish Bills 54 and 55 by next Monday night. If we have to stay a little longer, perhaps before the sitting is out on Monday afternoon, I might go up and ask for that unanimous consent so that we can finish off if we appear to be close to it. If we are not close to it, we will not do so. However, we want all members to be aware that there may be a suggestion we stick around to finish up those votes on Monday night. Your representatives on the steering committee were to tell you about this.

We have discussed with some of the six groups coming for Bill 30 the possibility that they might come at some time next week. Several of them have stated a preference for Thursday. This may work out well if we do finish Bills 54 and 55 on Monday, because the minister would like to talk a little bit on Tuesday and have his officials take us through some of the new amendments to Bill 30 before we proceed.

That might be a good way of ordering our business if we happen to finish

Bills 54 and 55. However, we are basically telling them that we may not be able to give them as much notice as we would like because it is a little unpredictable.

Some of the groups want as much as 45 minutes before the committee, even though they have had major presentations before. I will ask the members of the steering committee to advise me on that before we finalize agreements with the groups.

ONTARIO DRUG BENEFIT ACT
PRESCRIPTION DRUG COST REGULATION ACT
(continued)

Consideration of Bill 54, An Act to Authorize and Regulate the Payment by the Minister to Specified Persons on Behalf of Specified Classes of Persons for the Dispensing of Specified Drugs; and of Bill 55, An Act to provide for the Protection of the Public in respect of the Cost of Certain Prescription Drugs.

Mr. Chairman: Now we can move to Bills 54 and 55. Legislative counsel has kindly put together for you a document that indicates all the things we have passed to date, so that you have a running idea of where we are going with the amendments to Bill 54. I suggest you keep that for reference.

As well, we have all recently received another group of amendments to Bill 54. They can be broken down into two groups: those following from sections 10 and 11, which get down to the definitions of the best available price as offered by the government, and two amendments to section 5a, which we have voted on. I need to have a motion to reopen before we can deal with them here, or they will have to be dealt with in committee of the whole House as we go back for third reading.

I do not know if anyone from the ministry would like to speak to section 5a. Two motions are going to be moved in the name of Mr. Ward. An indication of why they were necessary would be welcome, so that members know that before they decide to reopen.

Mr. Bernstein: I will be glad to explain them.

The first one is a motion to add an additional subsection to section 5a. Subsections 5a(1) and (2) refer to the amount payable by the minister and, in effect, refer to the amount prescribed in the regulations plus the dispensing fee determined in accordance with the new section 5b. However, it is conceivable that the actual acquisition cost to the operator of the pharmacy may be higher than the amount prescribed in the regulations.

To take account of that, the purpose of subsection 5a(3) is to provide that where the actual acquisition cost as calculated in accordance with the regulations is higher than the prescribed amount, the minister shall pay the acquisition cost. This ensures that the operator of the pharmacy does not have to dispense at a loss.

Would you like me to go on?

Mr. Chairman: Explain both of them, and I will see if there is a motion to reopen.

Mr. Bernstein: In subsection 5a(2), as it was passed when the

committee last sat, it is provided that "The dispensing fee...shall be," and then there are two clauses. The first states that at a hospital pharmacy, the dispensing fee is the amount prescribed in the regulations. Clause 5a(2)(b) begins with "in all other cases," and then there is a provision for the amount determined under section 5b or the operator's usual and customary charge, whichever is less.

However, there is a third category: products or drugs commonly known as OTC, over-the-counter drugs. In those cases, there may or may not be provision for a dispensing fee. We are adding a third clause, (aa), to subsection 5a(2). It provides that "where the listed drug product does not require a prescription for sale and is designated as one to which this clause applies"--and the regulations would designate whether this clause does apply to a particular product--the dispensing fee is "the amount, if any, provided for by the regulations."

Mr. Chairman: To have a discussion on this, we need a motion to reopen section 5a. Then we could go through the subsections to deal with this. Is there a motion?

Mr. G. I. Miller moved that section 5a be reopened.

Mr. Chairman: All those in favour, please indicate.

Miss Stephenson: I would hope, Mr. Chairman, if you do this, that there would be some support for reopening the definition section again, because there are at least a couple of areas in the definitions that really need to be clarified or added to.

Mr. Chairman: It is awkward for me to work the quid pro quo for you, but--

Miss Stephenson: I simply said, "I would hope."

Mr. Chairman: --I would be happy to entertain it as I did this one to see whether there was interest.

All those opposed, please indicate.

Motion agreed to.

Mr. Chairman: Presuming that we do not wish to touch subsection 5a(1), there is a new motion for clause 5a(2)(aa). Mr. Ward is not here. Would Mr. Reycraft like to read this into the record?

Mr. Reycraft moved that subsection 5a(2) of the bill be amended by striking out "and" at the end of clause (a) and by adding the following clause: "(aa) where the listed drug product does not require a prescription for sale and is designated as one to which this clause applies, the amount, if any, provided for by the regulations; and."

Mr. Chairman: We have had Mr. Bernstein explain this, so why do we not just try to move into a debate on it?

Mr. D. S. Cooke: I would like some clarification. What is the current situation for these types of drugs?

Mr. Bernstein: For over-the-counter drugs?

Mr. D. S. Cooke: Yes.

Mr. Burrows: There are drugs designated in the formulary as OTCs or over-the-counter drugs. In the case of those, rather than pay a dispensing fee because these drugs can be purchased without prescription, the price is based on the cost marked up to provide a profit of 40 per cent.

Most of these are inexpensive products. For example, acetylsalicylic acid, or Aspirin, is not in the formulary, but it is one of the brand names people are familiar with. The majority of these drugs would be in the range of $5, $6 or less. Some cost more. There are many other drugs which traditionally are used in incomplete packages, or multiple quantities where a dispensing fee may be more appropriate.

Basically, the list of drugs so designated was determined in the early days of the program--in consultation, I believe, with the Ontario Pharmacists' Association. There really have been no substantial changes to the way the OTC designation has been assigned since the early days of the program. This is a housekeeping matter to try to--

Mr. D. S. Cooke: I am wondering what this does. It takes this section, or the compensation that pharmacists would get for these types of prescriptions, out of the concept of--

Hon. Mr. Elston: These are nonprescription.

Mr. D. S. Cooke: But they are in the formulary. The formulary is based on the best available price for the drug or substance. Then we have the other section that sets out the procedure you go through to set the dispensing fees.

I have not decided how I am going to vote on this because I want to know the implications first. Why would you not simply go through the process of negotiating this, since it has to do with dispensing fees under the other section of the act that we have already discussed?

Hon. Mr. Elston: At this point, Mr. Cooke, we do not have a dispensing fee for the over-the-counter drugs. Instead, there is a markup in place and, in that sense, there is no fee.

4:10 p.m.

Mr. D. S. Cooke: How will the formulary reflect these? The formulary is based on best available price and will already have a markup in it.

Hon. Mr. Elston: As I understand it, we will establish the best available price with a built-in markup, which is what happens now.

Mr. Bernstein: There will be a subsequent amendment saying that if the provisions respecting best available price are passed by this committee, they will not apply in respect of designated over-the-counter drugs.

Mr. Chairman: Is there further discussion?

Seeing none, all those in favour of the amendment moved by Mr. Reycraft please indicate. Those opposed?

Motion agreed to.

Mr. Chairman: Mr. Reycraft, would you like to move the subsection 5a(3) amendment?

Mr. Reycraft moved that section 5a be amended by adding the following subsection:

"(3) Despite subsection 1, where the cost to an operator of a pharmacy of purchasing a listed drug product dispensed, as calculated in the manner provided for by the regulations, is greater than the amount provided for by the regulations for the purpose of subsection 1, the amount that the minister shall pay under subsection 5(1) is the sum of the dispensing fee referred to in subsection 5a(2) and the cost to the operator."

Mr. Chairman: There was an explanation of this by Mr. Bernstein. Are there questions or discussion? I gather people understand this one, and I will just move ahead then. This has been an issue we have discussed previously.

Mr. Leluk: I would like to raise a point of order. I understand that yesterday--I was not present at this committee--a question was asked specifically about whether there were any new amendments. The answer was there were not any, yet today we are presented with these amendments. They are government amendments. A number of the interest groups have not had an opportunity to look at these, and neither have the members of the two opposition parties represented in this committee.

Mr. Chairman: Perhaps not even the government members.

Mr. Leluk: Whether the government members have seen them or not is of no concern to me. I feel that we, as committee members, should have an opportunity to look at these amendments in advance. I want to ask the minister why we could not have been provided with these amendments yesterday when a specific question was raised about whether there were new amendments.

Hon. Mr. Elston: Mr. Leluk, I was not here yesterday, but this one reflects a commitment I have made to the Ontario Pharmacists' Association for some time. Although it is unlikely that people will not be able to purchase drugs within the prices in the book when they are finally printed, there is a possibility. I have committed myself fully to members of the OPA when I have been speaking in public to them, and to others in private meetings and other places. I do not want to see a pharmacist reimbursed at less than his cost. This is something I have spoken about in this committee.

I have made that commitment to the people in the association. It may have been unfortunate that these amendments were not made available earlier, as you say, but I have committed myself to them for some time. I can tell you the over-the-counter one was totally overlooked.

Mr. Leluk: That is just one item. I recall that the last set of revised amendments we were given by the government was also handed to us in the morning as we arrived here. We did not have any prior time to look at those amendments. We are doing the same thing here today. That is not the right way to deal with the members of this committee or with the specific interest groups.

Mr. Chairman: You have me in a bit of an awkward position, Mr. Leluk, because I did ask whether you wanted to reopen. As I indicated, there was an option not to, but we voted in favour of reopening. Therefore, we are in the middle of discussing it. It is on the move. We could have put this over, if you had wished to.

Mr. D. S. Cooke: The point Mr. Leluk makes is fair. The opposition parties are trying to be reasonable about some very complicated bills that have been made more complicated by the fact that even though this committee was thought to be meeting yesterday, and therefore the amendments obviously were ready before today, we get them dumped on us today.

The second one, which we just voted on, I have no particular problem about because we have talked about it before. But concerning the first one, this is the first time that issue has been raised. Sure, it might have been overlooked, but the minister should understand that even in committee of the whole House you are supposed to table amendments with the opposition parties--what did the rules say?--a couple of hours before the committee meets. It makes it very difficult and it makes it very easy for us to make a mistake.

Forgive me, but through the process I am beginning to think you almost think the wool is being pulled over our eyes on some of these amendments. That is certainly an impression you begin to get.

Miss Stephenson: I voted to reconsider and reopen on the basis that it would be reasonable to do so. I did not anticipate that we were going to deal with them immediately. I thought you were suggesting that we were voting to add these to our examination of Bill 54, because we still have a good deal to do with Bill 54. I did not anticipate that we were going to be asked to vote immediately on these new amendments, which have just been introduced today. I certainly would reopen and would reconsider these amendments to the bill, but I do not think we should deal with them immediately we have made that decision.

Mr. Chairman: It is going to be a little awkward, because if we do not deal with section 5a, then we will go to section 10. We have a new amendment on section 10. If we skip that and go to section 11, we have new amendments on section 11. I am not exactly sure what we could deal with if we decided not to deal with them today.

Miss Stephenson: At least that would be in the context of the amendments we are dealing with already.

Mr. Chairman: We dealt with one of these two. If you do not want to deal with the second one, please indicate that to me. But you had indicated that you wanted go ahead, so I just did. Does the minister want to respond?

Let us make a decision. Do you want to deal with subsection 5a(3) at this point, or do you want to stand it down? This particular one is something we have discussed a great deal as compared with the one you just passed.

Mr. D. S. Cooke: This one is okay. The request for acquisition costs is something that has been discussed, and we know where the Ontario Pharmacists' Association stands on it.

Mr. Chairman: What is your preference?

Miss Stephenson: I have no problem with this one at all, except that I did not believe we were going to do it right away.

Mr. Chairman: Why do we not take the vote on this one and then move on to section 10, as we normally would have, and proceed along?

Mr. G. I. Miller: I would like to add one comment to the discussion. I think all members of this committee want to make sure that the druggists are treated fairly. That is what the ministry and the critics are trying to cope with, that they get a fair return. I do not think we can argue, as members of the Legislature, that they should not be given that right. There is some urgency to dealing with the bill.

Mr. Leluk: We are questioning the manner in which this has been handled.

Mr. G. I. Miller: I understand that, but we have to be at least fair to the minister and give him the opportunity to make those corrections at this time rather than at a later date.

Miss Stephenson: I have the feeling we have bent over backwards to be fair to the minister. We have delayed significantly our examination of a number of areas of the bill because the minister was not here or was not ready. We are being fair, but fair runs both ways.

Mr. G. I. Miller: No doubt about it.

Mr. Chairman: I gather, although there is some unhappiness around the procedure concerning this section, that people are ready to vote. On section 5a, with a new subsection (3), which Mr. Reycraft has introduced, you are ready to take the vote.

All those in favour, please indicate. Those opposed? I am presuming that when hands do not go up, they are with the affirmative.

Section 5a, as amended, agreed to.

4:20 p.m.

Mr. Chairman: We have a new amendment, subsection 10a(1a), but I am taking Dr. Stephenson's advice on this. We will leave that until we have finished section 11, if that is all right with people. I do not think it curtails our dealing with section 11, does it, Mr. Bernstein?

Mr. Bernstein: It does not, but would you like a very brief explanation?

Miss Stephenson: Do not confuse us at the beginning.

Mr. Bernstein: Would you rather wait till the end?

Miss Stephenson: Yes.

Mr. Chairman: We will wait to be confused on this one.

Mr. Bernstein: Call on me when you wish.

On section 11:

Mr. Chairman: We are now going to section 11. If you have Mr. Nigro's basic document in front of you, this is page 23. Mr. Ward moves that it read as follows:

"11(1) The Lieutenant Governor in Council may make regulations,

"(a) designating eligible classes of persons for the purposes of section 2;

"(b) designating drugs as listed drugs;

"(c) designating substances other than drugs that are listed substances."

We now have clause 11(1)(b) as amended and a new amendment as well. I am not sure of the government's interest in this. Is what we have received today to replace what is on our page 23? Is there a difference? I have not had a chance to read these.

Hon. Mr. Elston: We put in a couple of things.

Mr. Chairman: Mr. Ward moves that clause 11(1)(b) of the bill be struck out and the following substituted therefor:

"(b) prescribing conditions to be met by products or by manufacturers of products in order for the products to be eligible for designation as listed drug products;

"(ba) designating a product as a listed drug product where the Lieutenant Governor in Council considers it advisable in the public interest to do so, but a product shall not be so designated if it or its manufacturer has not met the conditions described in clause (b)."

Mr. Ward: We had some discussion on those prior to adjournment last time.

Mr. Chairman: I have made an error in that we should have had our discussion on clause 11(1)(a), because this is an amendment on (b). Is there any discussion on (a), "designating eligible classes of persons for the purposes of section 2"?

If not, all those in favour, please indicate.

Motion agreed to.

Clause 11(1)(b) is now amended by Mr. Ward. Is there discussion?

Miss Stephenson: This amendment and the act as currently written provides that the Lieutenant Governor in Council will determine the conditions to be met by the manufacturers to have their products listed as eligible for designation as listed drug products within the formulary. Somewhere in the definitions I believe we have some concern about the lack of definition of a formulary. That will have to be corrected.

My concern about this is that, unless the Lieutenant Governor in Council is moved to do so, there will not be a requirement to ensure that the health of the public will be as protected as possible. It will be up to the Lieutenant Governor in Council to determine whether all the products need to have certain kinds of tests to achieve listing within the formulary.

I have some concern about this. If I can get absolutely guaranteed, iron-bound and totally convincing agreement from the minister that the protection of the public will be uppermost in the mind of the Lieutenant

Governor in Council when this is done, I might be moved to consider supporting this. At the moment, I cannot.

Mr. Chairman: What shall I put on my list of points to which you want responses?

Miss Stephenson: That the health of the public will be the primary concern in listing products in the formulary.

Hon. Mr. Elston: I was not sure whether I was supposed to respond to that, but it is the criterion that the public interest be guarded and protected in all of this.

Miss Stephenson: We have not seen the conditions that are to be utilized to do this. Therefore, we have no guarantee that this is so.

Mr. Chairman: Is there any further discussion on the amendment moved by Mr. Ward?

Mr. D. S. Cooke: Can Dr. Stephenson tell us the alternative? We have to have a section that allows the government to make regulations to protect the public.

Miss Stephenson: In the publication of a formulary, upon which the existence of this bill and the next bill depends, it seems to me there should be within the act some clarification of the conditions that are to be met by manufacturers and by the products to ensure that they cannot be circumvented in any circumstance.

There may need to be additional conditions by regulation. There is no reason that could not be done. However, if the primary conditions are by regulation and we have no idea what those regulations entail, we do not have any guarantee the concern expressed will be there.

Mr. D. S. Cooke: There is no other amendment before us of which I am aware. Is there one?

Mr. Chairman: I do not have another before me.

Miss Stephenson: The current drafting of the bill simply designates drugs as listed drugs, and the definition that was suggested in the definitions section--which was not, I believe, either dealt with or defeated by this committee at the time I was not here--does not provide for the kinds of things that should be defined within the act for inclusion within the formulary.

Mr. Chairman: As you indicated, the committee had made a determination on this earlier. That is why you are in the position you are in on it. I have no amendments to clause 11(1)(b) that would do anything for this, but you have suggested that before we complete the bill there might be a reopening of discussion on the definitions section as well. I will be pleased to entertain that before we take the final vote to see what the will of the committee is at that point.

Is there further discussion on 11(1)(b) at the moment? If not, we will take the vote.

Clause 11(1)(b), as amended, agreed to.

I will move on to clause 11(1)(c), "designating substances other than drugs that are listed substances."

Interjection.

Mr. Chairman: Yes. I was taking that as one motion.

Is there discussion on clause 11(1)(c)? I have no other amendments.

Clause 11(1)(c) agreed to.

On clause 11(1)(d), "authorizing the charges that are permitted under section 4," again I have no amendment from any group. Is there any discussion?

Clause 11(1)(d) agreed to.

4:30 p.m.

Clause (e) reads, "prescribing the information to be included in a claim under subsection 5(4)."

Interjections.

Mr. Chairman: We did cover section 5a, but we did not cover section 5.

Miss Stephenson: Section 5 has not been carried.

Clerk of the Committee: No. It has been stood down.

Mr. Chairman: We have no choice but to stand these two down until we finish with the definition of best available price and then come back. This means that clauses 11(1)(e) and (f) will be stood down until we complete the definition of "best available price." We will go back to section 5 and then come back to do them. The clerk will make sure I do, will you not?

Clerk of the Committee: Yes.

Mr. Chairman: Clause 11(1)(g) reads as follows:

"requiring operators of pharmacies to file reports to the minister concerning the cost to them of purchasing any drugs and prescribing the information to be included in such reports and the frequency with which such reports are to be made."

There is a government motion here.

Mr. Ward moves that clause 11(1)(g) of the bill be amended by inserting after "pharmacies" in the first line "and manufacturers and wholesalers of listed drug products" and by striking out "them" in the second line and inserting in lieu thereof "operators of pharmacies and wholesalers."

Mr. Ward: This is to clarify the terminology and to require manufacturers and wholesalers to report price data, as indicated in the notes.

Miss Stephenson: The definition of information to be provided by manufacturers and wholesalers of listed drug products was outlined in a previous section and probably should be noted with a reference to that section

here, so that there can be no mistake about the information to be transmitted to the minister by the wholesalers and the manufacturers.

That information is different from what is required from the pharmacies or operators of pharmacies. To put them together may lead one to the misapprehension that the regulation provides that precisely the same information could be required from both those groups. We did pass the section that defined the difference in the information required. Instead of adding wholesalers and manufacturers, I wonder whether we would be better to have a subclause 11(1)(g)(i) or something of that sort, which would say the same sort of thing about wholesalers and manufacturers.

Mr. Chairman: Mr. Bernstein, what is your opinion of that? Would it be wise for us to have a subclause 11(1)(g)(i) to make that separation, or is it just as easily done in this way but with some reference back to the appropriate section? Does either Mr. Bernstein or our legal counsel have any advice for us on this? It is only a suggestion.

Ms. Baldwin: As I read it, I do not see the problem. I do not see that, as amended, the provision would suggest that the information in the reports from the two groups would have to be the same. I would be interested to hear Mr. Bernstein's opinion on that.

Mr. Bernstein: The distinction that exists in section 9, as amended by the committee, is that there is a power to inspect records "in the possession or under the control of an operator of a pharmacy or a physician." In new clause 9(2)(a) there is the power to inspect records "in the possession or under the control of a drug wholesaler or manufacturer."

I am not sure that there is a clearly articulated difference in the records that may be inspected. The new subsection 9(3) talks about taking away "a record in the possession or under the control of an operator of a pharmacy." The new clause 9(3)(a) talks about taking "away a sales record and/or marketing record for the purpose of making a copy," but that distinction is only about what records may be taken away for the purpose of making a copy.

Miss Stephenson: And for any purposes of "inspection by"--not just taken away and made record of but "inspection by."

Mr. Bernstein: That is not reflected in this as amended by the committee. The only distinction is as to what can be taken away "for the purpose of making a copy."

Miss Stephenson: My concern is that there is a difference. If we simply amend, as suggested by the minister, the clause will say that manufacturers and wholesalers of listed drug products will provide information regarding the cost of purchasing them. We are not. We are talking about the cost of selling the drugs and the cost of selling the drugs by the wholesaler as well. It seems to me that there is a difference. We are not talking about the cost to the manufacturer specifically; we are asking the cost from the manufacturer. I am hoping that we are going to clarify this so that I will be able to understand it when it is read.

Mr. Chairman: I am not sure whether this assists the case or not. Legal counsel is suggesting that perhaps we write in after the word "included," on what is currently the third line, "in each case." Would that handle it or is the problem the word "purchasing"?

Miss Stephenson: That is the problem for manufacturers. They are not purchasing the drugs; they are selling them.

Mr. D. S. Cooke: Did we not already cover some of this in an amendment to section 10, that I moved, that says, "gives regulation power to the minister" and clause 10a(1)(b) says "give to the minister, on request, the information prescribed by regulations concerning the production and sale of the drug or substance." The whole section specifically refers to manufacturers. We passed that the last time we met.

Miss Stephenson: Yes, but the information we required from them was information related to "marketing and sales."

Mr. D. S. Cooke: "Production and sale." Right.

Miss Stephenson: Not production. Marketing and sales--not production.

Mr. Chairman: I wonder whether it might be helpful at this point to flag this. That allows legal counsel to have another look at it for a few minutes to see whether there is any way a wording within clause 11(1)(g) can accommodate both meanings or whether we need a subclause.

Miss Stephenson: I have no quarrel at all with the intent, which is to get from the manufacturers and the wholesalers the cost at which they sold those to the pharmacies. But that is not what this clause is going to say.

Mr. Chairman: That is why I am suggesting that perhaps, because this is a friendly suggestion rather than something which is contrary to the principle involved, if in a minute or two somebody can give me a suggestion about how to deal with this, we can come back to it.

Ms. Baldwin: I still am a little bit confused about what the concern is. The proposed amendment would read, "requiring operators of pharmacies and manufacturers and wholesalers of listed drug products to file reports to the minister concerning the cost to operators of pharmacies and wholesalers of purchasing any drugs," etc. I am happy to be of assistance but I do not understand the problem.

Miss Stephenson: I find that to be confusing. I would redraft it to suggest that we are requiring of pharmacies and operators of pharmacies the information regarding the cost of purchase of drugs and from manufacturers and wholesalers the cost which was charged to the pharmacies and operators to clarify that we are talking about two different things.

4:40 p.m.

Mr. Chairman: I will leave that with you for a few minutes, Mr. Bernstein. We will come back to it. We need to be sure the language meets everybody's needs. At the moment, it does not seem to be.

Mr. Reycraft: In her last explanation, Dr. Stephenson omitted the wholesalers.

Miss Stephenson: I am sorry. I did not mean to.

Mr. Reycraft: It was not intentional.

Miss Stephenson: No, it was absolutely not intended. I was paraphrasing in order to attempt to--

Mr. Bernstein: Can I ask something to clarify what I should be doing? It seems to me that the cost to the wholesaler or to the operator of the pharmacy of purchasing a drug is the same thing as the cost to the manufacturer or to anyone else of selling to the wholesaler or to the operator of the pharmacy.

Miss Stephenson: No, it is not.

Mr. Bernstein: If there is a distinction, I ought to know about it.

Miss Stephenson: The cost of selling something is quite different from the cost of purchasing. We are not even talking about the cost of selling it. We are talking about the price that is charged.

Mr. Bernstein: Is that not the same as--

Miss Stephenson: The cost of selling it?

Mr. Bernstein: No, the cost to purchase.

Miss Stephenson: I suppose the cost to purchase might be so construed.

Mr. Bernstein: That is what this amendment says, "the cost to the operator of a pharmacy or the wholesaler of purchasing any drugs." Do you see?

Miss Stephenson: Yes, I see. However, I find it lacks clarity.

Mr. Bernstein: It is hard to know how to make it clearer.

Miss Stephenson: I suppose you would need more words, Mr. Bernstein.

Mr. Bernstein: I have lots of those.

Miss Stephenson: I know.

Mr. Chairman: Perhaps we are coming to a resolution of this. The meaning does not seem to be that obscured if the distinction is made, as it was read by legal counsel, of the placement of the words "pharmacies", "manufacturers" and "wholesalers". If they are distinct, then as Mr. Bernstein is saying, the cost of purchase by the pharmacy would reflect the cost to provide by the wholesaler and the manufacturer. Therefore, we would not have the confusion as I had seen it originally and the way you described it. I need to know whether you want a redrafting or to proceed with it as is.

Mr. D. S. Cooke: Proceed.

Mr. Chairman: I will call a vote on this. A vote in opposition to this would be a vote against the lack of clarity rather than the principle.

Motion agreed to.

Mr. Chairman: Clause 11(1)(h) reads, "requiring operators of pharmacies and physicians to retain specified records respecting their purchase of drugs for the purposes of this act and prescribing the period of time those records shall be retained."

Is there any discussion on this? We have a recommendation for other

clauses right after this. There is nothing to amend this clause itself. We are going to deal with clause (h), and then before we move on to clause (i), there is another proposal for subclauses (na) and (hb). They will be new subclauses. All those in favour of clause 11(1)(h), please indicate.

Motion agreed to.

Mr. Chairman: Mr. Ward moves that subsection 11(1) of the bill be amended by adding thereto the following subclauses:

"(na) prescribing the manner of calculating the cost to an operator of a pharmacy of purchasing a listed drug product;"

"(nb) designating listed drug products that do not require a prescription for sale for the purpose of clause 5a(2)(aa) and providing a dispensing fee for those products or providing that there shall be no dispensing fee for those products."

Mr. Chairman: Do you wish to speak to the motion?

Mr. Ward: No.

Mr. Chairman: The latter one of course was--

Mr. Ward: The one is for the over the counter drugs and the other gives us the authority or the ability to calculate the cost.

Mr. Chairman: These reflect the new reality of what we brought in in subsection 5a(2).

Mr. D. S. Cooke: I want a better understanding of clause 11(1)(ha). What does that do to subsection 11(2)(a) when we get to the best available price provision?

Hon. Mr. Elston: It will not dominate subsection 11(2)(a). It will be of use only in a situation where a pharmacist cannot purchase within the price set out in the formulary. We have to have these regulations in order to allow us to examine the information that he provides to us to establish cost where his cost is higher than that listed as the amount we will be reimbursing him under the formulary.

Mr. D. S. Cooke: This goes hand in hand--

Hon. Mr. Elston: --with the amendment to subsection 5a(3).

Mr. Chairman: You have referred in clause 11(1)(hb) to clause 5a(2)(aa). Would it not be wise to refer to it there? Is that a friendly suggestion?

Hon. Mr. Elston: I have no problem with that.

Mr. Chairman: We would add this friendly amendment to clause 11(1)(na) at the end for the purposes of subsection 5a(3). Is it clear this is for that only?

Mr. Bernstein: The matter of calculating the cost to the operator of purchasing--in other words, of calculating the acquisition cost--is relevant in several places in the bill. One is in connection with what we discussed

earlier where under the new--I have lost track of the numbers--it is where the minister was unable to ascertain the best available price.

Miss Stephenson: We have not arrived there yet. That is in the next section.

Mr. Bernstein: There was the earlier amendment today where the acquisition cost is greater than the prescribed amount: the best available price plus percentage, if that is adopted by the committee. There is yet a third place, but I cannot recall where it is at the moment.

Acquisition cost is relevant in several places. This regulation-making power should not be tied to one particular provision to the exclusion of the others. It will be the same method regardless.

Mr. Chairman: Can we check with legislative counsel? There may just be two places.

Ms. Baldwin: I am aware of two places. There is the one we have just referred to; the other is the proposed clause 11(2)(c).

Mr. Ward: I do not think the addition of the friendly amendment does anything to enhance the amendment, with the addition of this clause. You are going to need to establish the manner by which cost is determined because of other sections in the bill. I do not see why we cannot leave this stand.

We could refer to every section, but is that not redundant?

Miss Stephenson: If the purpose of subsection 11(2) is to ensure that the principle of best available price will pertain in the vast majority of circumstances, then surely to prescribe the manner of calculating the cost to an operator for those circumstances in which it cannot apply is necessary and appropriate. Therefore, this section should refer to those areas in which it cannot be done.

Mr. Chairman: Perhaps I can be of assistance. I gather special authorizations are the third possibility here, and we have not talked about those. If we choose to, we can make references to sections or we can change the wording slightly to refer to the three kinds of instances that are exceptions.

4:50 p.m.

Ms. Baldwin: I have one brief comment about this. If the committee decides it wants to add something at the end that refers to all the places where it comes up, of course I have no trouble with that. But what the clause is doing is prescribing the manner of calculating the cost. Since all it is doing is providing a manner of calculation, I do not see how it could be used except in the context in which it is intended. It certainly could not be used to set an amount the minister is going to pay, for example, because the rest of the rules of the bill clearly spell that out.

Miss Stephenson: But--

Mr. Chairman: Sorry. Mr. Cooke is first.

Mr. D. S. Cooke: Maybe legislative counsel can set my mind at ease. We have this section and we have clause 11(1)(hb), which limits the

negotiations on dispensing fees. We have amendments to section 11 where the government is suggesting the best available price be the best available price for Canada. If that cannot be ascertained, then we go back to this section. I am getting concerned that what we are really doing here is putting a whole bunch of sections in the bill that will result in "best available price" not being able to be determined and the end result would be acquisition cost.

Ms. Baldwin: May I make one comment in terms of the meaning of the bill as it stands and as the proposals are made? I do not think the change of adding for the purpose of subsection, and then listing the subsections that are going to apply, would meet that concern of yours. I think that is more a policy concern that would not be met in that way.

Mr. D. S. Cooke: Except if we give more power to the minister or the Lieutenant Governor in Council, and do not put it in the legislation, then there is nothing we can do about it after the fact. What we are looking at is something on clause 11(1)(ha) that limits the flexibility of the government so no one can get around the principles that we are trying to incorporate in the bill.

Ms. Baldwin: I think what you are trying to limit, though, is not the describing of the manner of calculating, but where that is to be done, where you are giving the minister authority to change calculating the cost to the pharmacist instead of this. That is all I am trying to say, Mr. Cooke.

Mr. Chairman: I gather from what I am hearing is there is no particular aversion, from the government's perspective, of trying to put in the three subsections. Would there be three subsections? There would be 5b(3) and there would be 11(2). So there would only be two references.

Hon. Mr. Elston: You should probably add some reference to special authorization, since those are part of our working program now.

Mr. Bernstein: I think that would be covered by the fact that it would be impossible to ascertain the best available price, if I am not mistaken.

Mr. Chairman: I gather that we have only the two subsections placed. Let me just be clear about the second one. That was clause 11(2)(c). It has not been dealt with as yet. Do you wish to put it in at this stage and then come back if necessary? We will not finalize subsection 11(1). Why do we not do it that way?

It is understood now what we are adding to the end of clause (ha) of subsection 11(1) for the purposes of subsection 5a(3) and clause 11(2)(c). Any further discussion?

Mr. D. S. Cooke: We are doing clauses (ha) and (hb) right?

Mr. Chairman: Yes, at the moment we are at clauses (ha) and (hb).

Mr. D. S. Cooke: I had the understanding when we discussed the earlier amendment that there was not a dispensing fee but a markup for over the counter drugs. There is a reference here to "dispensing fee." If there is a dispensing fee, then I want it in the disputes mechanism section, not by regulation.

Hon. Mr. Elston: I have no problem with that. Mr. Burrows actually

mentioned that where you have more expensive ones, there are some cases where a dispensing fee may be appropriate. But generally speaking, there is a markup under the current situation only for the over the counter drugs. I do not know--

Mr. D. S. Cooke: What is the minister's difficulty with just putting this whole thing in the disputes mechanism section, where it is negotiated?

Miss Stephenson: What is the difficulty with--

Hon. Mr. Elston: It is a matter of maintaining this system as closely as we can to what we have working. I have no particular problem necessarily. We have dealt with OTCs in a particular way right through the course of the thing. Unless we were able to provide OTCs with the markup, there may not be a dispensing fee at all, or a markup, within our ability to allow it under this act. That is all.

Miss Stephenson: Why do we not say that, for OTCs, the designated listed drug products that do not require prescription for sale for the purpose of subsection 5a(2) etc., and provide a markup or a percentage, whatever you want to call it there, instead of including a dispensing fee at all? There is no percentage in including a dispensing fee for OTCs.

Mr. Bernstein: If we wanted to set up that scheme, another clause in another place would be appropriate.

Mr. Chairman: I am not sure I am hearing you there.

Mr. Bernstein: I am saying that if we want to provide in the bill for a markup, this would not be the place. We could make a clause in another part of the bill that would provide for that. However, I understand it is not necessarily the case that the nondispensing fee equates to a markup. Mr. Burrows might help me on that one.

Mr. Burrows: There are drugs that do not legally require a prescription but are traditionally utilized only pursuant to a prescription. A good example would be the first use of insulin. In that case, by agreement with the Ontario Pharmacists' Association since the beginning of the program, a lower-than-usual markup is applied to those products. In the case of a drug like theophylline, which does not legally require a prescription in a certain strength, the drug is traditionally not bought over the counter; it is usually prescribed by the physician. In that case, the traditional usage would dictate that a dispensing fee would be more appropriate.

Historically, there have been the two categories of OTC products. It is certainly something that could be subject to discussion between the ministry and the profession, but the intent in this piece of legislation is not to change the status quo, and the wording is such that the option is there, clearly indicating that the option for change could exist in the future as well. The desire is to preserve the status quo, not to change it.

Mr. D. S. Cooke: There are a lot of things that a lot of people have wanted to maintain in these bills, but I do not understand. We limited what the disputes mechanism could deal with. We are not dealing with the markup under best available price or any of the other price concerns, but this is a dispensing fee, no matter how you want to look at it, whether it is a markup or a fee. Under our disputes mechanism section, it can be dealt with in either way by negotiations.

Miss Stephenson: I have no difficulty including it under the negotiations section. It just seems to me that we are suggesting strongly that a dispensing fee is inappropriate as a means of recompense for OTCs and the way to deal with OTCs is to provide for some kind of markup, which has nothing to do with a dispensing fee. In most circumstances it takes no great professional skill to hand an over-the-counter drug to the patient.

Having said that, I would have to qualify it. From time to time, I suppose the pharmacist has to suggest that the patient should not be taking it at all because it is in conflict with other drugs in the profile. None the less, OTCs are a major problem. If there is some way we can find a limitation for them, we should be pursuing it.

Mr. Chairman: The options I am gathering from the two critics are that Mr. Cooke will be voting in opposition to this entire subclause 11(1)(hb), and Dr. Stephenson is suggesting that the references to the dispensing fee be eliminated from it.

5 p. m.

Ms. Baldwin: I have one minor comment. I want to make sure Mr. Cooke and the committee understand that subclause 11(1)(hb) ties up with the new amendment that was done before. If this were defeated, you should probably go back and deal with that as well.

Mr. D. S. Cooke: I realize that.

Mr. Chairman: I wonder whether this silence will show up on the tapes as 18 seconds missing.

Miss Stephenson: Are we going to talk about markup? Is that part of the legislative language?

Mr. D. S. Cooke: No.

Miss Stephenson: It would seem to me that we could suggest, "designating listed drug products that do not require a prescription for sale for the purpose of clause 5a(2)(aa) and providing for a negotiated markup for those products."

Mr. D. S. Cooke: We could tie it into the disputes mechanism.

Miss Stephenson: That would give the minister the authority to add that cost to what is being paid, but it also includes it in the negotiation discussion regarding--

Mr. D. S. Cooke: We could refer to the section on the negotiating--

Miss Stephenson: Yes.

Mr. Chairman: Here is a suggestion from the minister that you can try on for size.

Hon. Mr. Elston: What we could do with clause 11(1)(hb), just for discussion purposes, is take out the fourth line and the first two words of the fifth line, which say "providing a dispensing fee for those products or." We would then have the section read, "designating listed drug products that do not require prescription for sale for the purpose of clause 5a(2)(aa) and

providing that there shall be no dispensing fee for those products."

That would mean that any product for which a dispensing fee was required would automatically have to be determined under the dispute mechanism, so that there would be no provision under this regulation of a dispensing fee, but it would naturally, where there was a dispensing fee, then go into the dispute mechanism.

Mr. Chairman: Are you suggesting that as an amendment? Are you changing your own--

Hon. Mr. Elston: I am suggesting that for discussion purposes.

Mr. Chairman: It would basically be striking the words "providing a dispensing fee for those products or."

Miss Stephenson: Does that ensure that some kind of consideration can be given to the requirement to deliver these under the program through something akin to a markup? Does this section ensure that will happen?

Mr. Bernstein: Not by itself. It does not ensure that.

Hon. Mr. Elston: I do not think so.

Miss Stephenson: No. If we take the section just as you have redefined it, then what will be delivered to the pharmacist, on dispensing an OTC through this mechanism, will be only that cost of the drug and nothing else, whatever that happens to be.

Hon. Mr. Elston: Not necessarily. All this list says is that there will be a list of products to which the dispensing fee will not apply. I do not know how we can work in the concept that you want to have enshrined there, whether that would be a separate section or whatever.

Miss Stephenson: You have suggested that this was included this way in order to ensure that there was not any huge variation from current practice. All I am suggesting to you is that if you simply say you will not provide a dispensing fee for those products, you do not give yourself the authority to provide for anything in addition to whatever the price is that has been established for it.

Mr. Bernstein: We do have that authority already.

Miss Stephenson: Under what?

Mr. Bernstein: Under clause 11(1)(f), which provides for the power to make regulations prescribing amounts payable by the minister. When we get to it, we will be dealing with best available price, but the government will be proposing that--

Hon. Mr. Elston: Since we are a little uncertain about best available price and what is happening with it--

Mr. Bernstein: It does not exist yet, but if and when it comes to exist, there would be a proposal that the best available price provisions not apply to the designated OTCs. The result of that will be that the Lieutenant Governor in Council may make regulations prescribing amounts payable by the minister, and those amounts, presumably, would follow whatever the current

system is. If it is cost plus a markup, it will follow that principle.

Mr. D. S. Cooke: Why could we not just add something at the end of it that says, "as determined under" and then refer to the disputes mechanism, just as it is already in the section? At the end it would be, "no dispensing fee for those products as determined under," and then it would refer to the disputes mechanism resolution section. The provision would say that whether or not there is a dispensing fee, it is going to be determined by negotiations under that section.

Mr. Chairman: This is all very well and good, but it is very confusing at the moment.

Miss Stephenson: Could we stand this section down until we have tried to deal effectively with section 11 and determine where we are going with that? Then we can come back to this.

Mr. Chairman: That is fine with me, or if you wish, we can pass it with the change suggested by the minister and then come back to it, leaving it open.

Miss Stephenson: No, not yet. I am not sure enough about that yet.

Mr. Chairman: We will stand it down. Is there agreement on this? I always like that after a good 20 minutes of discussion. We will now stand down both these subsections and deal with them together as we come back to them. New clauses 11(1)(ha) and 11(1)(hb) are to be stood down.

We now come to clause 11(1)(i), which reads, "respecting any matter considered necessary or advisable to carry out the intent and purposes of this act."

Miss Stephenson: That is standard.

Mr. Chairman: Yes, that is the standard clause. Can we have no discussion on this? All those in favour of clause 11(1)(i), please so indicate.

Clause 11(1)(i) agreed to.

Mr. Chairman: We will now move to subsection 11(2). It does not make any sense for us to deal with the subsection as I see it there. We have a brand-new subsection, which I believe takes the place of the entire subsection 11(2). Therefore, it would make more sense if Mr. Ward were to read into the record the new subsection.

Mr. Ward: Just a minute.

Mr. Chairman: You do want to move this, do you not? Do you want to have this new one you brought in substitute for everything that was there before in clauses 11(2)(a) and 11(2)(b)?

Hon. Mr. Elston: No. Actually "best available price" is not our concept. If there is an amendment to be made, it is to be made by someone other than the minister.

Mr. Chairman: My understanding is incorrect. I will read to you from page 25 of Mr. Nigro's document, and we will accept amendments as they were listed already, before we come to the amendments that are proposed here.

Mr. Ward: I think we do not have an amendment on the floor.

Mr. Chairman: Subsection 11(2) that I have here is not to do with this; it is to do with something else?

Miss Stephenson: No. Subsection 11(2) is on page 25 under the title, "Proposed Amendments."

Mr. Chairman: Yes, and we now have a new one that was handed to us today. It seems to be for subsection 11(2) and the best available price provision.

The minister has indicated that what I need to do is introduce what was on page 25 of Mr. Nigro's paper. Then we will accept amendments, and I gather this will amend other amendments. Why do I not try that and see what happens?

Clerk of the Committee: Could I suggest that if they have not been moved, then at the moment these amendments do not exist?

Mr. Chairman: Neither of these amendments exists at the moment.

Clerk of the Committee: Nothing exists, so read them into the record.

Mr. Chairman: That is what I am doing. Yes, you have got it.

I am now going to read and you are going to enjoy this.

Mr. Ward moves:

"(2) "A regulation made under clause (1)(f)"--which has already been stood down, of course--"may,

"(a) provide for a specified amount, provide one or more methods for determining the amount or authorize the minister to determine the amount payable in respect of each drug or drug product; and

"(b) provide for a specified amount or provide a method for determining a fee or allowance for dispensing a drug."

Hon. Mr. Elston: It is the original section.

5:10 p.m.

Mr. Chairman: That is the original section. I am not sure what is original and what is not in Mr. Nigro's document, so we are assigning names. Are there amendments to this original subsection 11(2)?

Mr. D. S. Cooke: I am just trying to figure this out.

Mr. Chairman: Mr. Cooke moves that section 11 of the bill be amended by adding the following subsections:

"(2a) In determining the amounts payable by the minister under subsections 5(1) and 5(2), the Lieutenant Governor in Council shall ascertain and prescribe from time to time the best available price of the drug and prescribe a percentage of the best available price, not less than 10 per cent nor greater than 20 per cent, to be added to it.

"(2b) Where the Lieutenant Governor in Council is prescribing the best available price of a drug under subsection (2a) and the drug is an interchangeable product, as defined in the Prescription Drug Cost Regulation Act, 1986, the amount prescribed shall be the best available price of the least expensive product that is interchangeable with it.

"(2c) In this section, 'best available price,' in respect of a listed drug, means the lowest price at which the manufacturer of that drug supplies to purchasers in Ontario the particular dosage, form and strength of the drug."

The amendment reads practically the same as on page 26 of Mr. Nigro's document, except that the words in subsection (2a), "not less than 10 per cent," are added. Therefore, there is a minimum as well as a maximum, which is the same as the motion that was circulated earlier with Mr. Swart's name on it when he was a member of the committee. I want to be clear on the numbering here.

Ms. Baldwin: Mr. Chairman, what have we done with subsection 11(2)? The subsections that Mr. Cooke has proposed follow it.

Mr. Chairman: This is just what I read out. This is subsection 11(2a) here.

Ms. Baldwin: That is clause 11(2)(a). If you look at Mr. Cooke's motion, which you may not have in front of you, it is subsection 11(2a) and subsection (2b).

Mr. Chairman: In fact, there are no amendments to subsection 11(2) at all.

Ms. Baldwin: I have one from Mr. Cooke in my records. I do not know whether it is in here or not and I do not know whether he plans to read it.

Mr. Chairman: Mr. Cooke, just for clarification, because of the way it is listed on page 25 of Mr. Nigro's document, I presumed we were getting to subsections 11(2a), (2b), etc., but we are not. We are on subsection 11(2), in which there are clauses (a) and (b), but we are not on subsection 11(2a) yet. Let me put it that way. It is my understanding the amendment you have just introduced would add new subsections 11(2a), (2b), etc. Does anyone have amendments to the original clauses 11(2)(a) and (b)? I find it very hard to determine the differences.

Clerk of the Committee: I have one from Mr. Swart and another from Mr. Cooke on subsection 11(2).

Mr. Chairman: Do these still apply, Mr. Cooke?

Mr. Ward: I have a couple, too. I have amendments to the amendment.

Mr. D. S. Cooke: I have them here. I am just trying to figure it out. It has been so long.

Interjections.

Mr. D. S. Cooke: I have one amendment to subsection 11(2) in respect to physicians.

Mr. Chairman: I think that must refer to another numbering we had,

not to the present one. Mr. Bernstein, is there any way you can help us with this?

Mr. Bernstein: I do not want to add to your troubles, but I think subsection 11(2) should be stood down, because if subsection 11(2a) and the subsequent ones are adopted, then this subsection 11(2) may be unnecessary and inconsistent.

Mr. Chairman: That does not add to my problems; that helps me. Thank you.

Mr. Bernstein: Oh, good.

Mr. Chairman: We will therefore stand down the two sections--the little bits I read--and accept as moved the motion that Mr. Cooke made, which was initially circulated in the name of Mr. Swart. That is what we are debating at the moment.

Mr. Cooke, do you wish to speak to your amendment?

Mr. D. S. Cooke: Not at length. We are finally at the pricing section, and this has been debated in other sections of the bill. It simply is the best available price in Ontario. It guarantees a minimum of 10 and a maximum of 20 in the section. After weeks and weeks of public hearings, I have become convinced that the best available price is the best pricing mechanism. I hope this section carries.

Miss Stephenson: I agree with Mr. Cooke about the direction he is pursuing in this section, because it would appear that after all the information that has been developed and presented, this mechanism is the best. I wonder, though, whether Mr. Cooke would agree to clarifying the definition of "best available price" with the words "the lowest price at which the manufacturer of each product supplies that product to purchasers in Ontario, the particular dosage, form, strength, package size and quantity of their product, which price shall be prescribed by the regulations." In that way there would some clearer definition of what that best available price is related to.

Mr. D. S. Cooke: I am not quite sure I understand. The way you word it, there would be a listing for each drug; there will be under Bill 55 but not under Bill 54.

Miss Stephenson: The formulary is going to be used for both. That is the matter that is before us.

Mr. D. S. Cooke: Under the regulations there can be one formulary, I agree, but there will be two sets of regulations.

Miss Stephenson: But you are already saying that when you use best available price under the ODB, the practice is to reimburse the pharmacist at the rate of the lowest best available price.

Mr. D. S. Cooke: Right.

Miss Stephenson: So it matters not that you have suggested that each one has to be listed, because that formulary is going to be used by the pharmacist in both circumstances.

Mr. D. S. Cooke: Under the ODB, it will be the lowest of the interchangeables and the best available price of that interchangeable. There only is a need to have one listing.

Miss Stephenson: But that applies only to interchangeables.

Mr. D. S. Cooke: That is right. But if there is a single-source drug, then it is obvious there is only one source for that drug; so it is the lowest available price for that drug.

Miss Stephenson: No.

Mr. D. S. Cooke: If it is a single-source drug or it has not been designated interchangeable--

Miss Stephenson: If it is not designated interchangeable and the pharmacist is going to use the formulary in both circumstances, surely the information is not going to change from one copy of the formulary to another.

Mr. D. S. Cooke: But the point--

Mr. Chairman: We are doing a lot of negotiating as we are going along here. I think it is helping the legislation, but just for the ordering of things to keep us on track, you basically asked for a friendly amendment, if I might put it that way, to the definition. I am hearing reluctance to undertake it. Therefore, we would need either an official amendment to that or to vote against it and then bring in the amendment, whichever. Am I correct or incorrect?

Mr. D. S. Cooke: You are correct, but I would like to expand on it because I think it is crucial.

Mr. Chairman: All right. I will let you discuss it.

Mr. D. S. Cooke: If we go the route of listing--there is no reason to list each individual drug under the ODB plan--we will likely have one book, but there will be two sets of regulations in that book. It may have a listing for every drug and have an asterisk next to the price that applies to Bill 54.

To be technical about it, there will be two sets of regulations. If you list the price for every drug under this bill, there is absolutely no need for it, and it would take away from best available price under the ODB. It would also probably mean we would not necessarily have that concept under the ODB.

5:20 p.m.

Mr. Chairman: Mr. Ward wanted in on this.

Mr. Ward: Actually, I wanted to move an amendment to the amendment.

Mr. Chairman: Let me deal with this first to clear it up.

Mr. Ward: Can I explain why I want to, though?

Mr. Chairman: This is not a friendly amendment; so you would either need to work up one or to move it, because Mr. Cooke feels it will either be redundant or would detract from his. In that sense, we would need an amendment on that. Mr. Ward has a suggestion he would like to make.

Mr. Ward: Everybody has received a copy of the proposed amendment, and I do not want to regurgitate the debate that has gone on for several months over best available price. I think we have indicated that we do not want to be the authors of this. However, I do think the amendment to the motion that has been put forward, which will substantially change the wording and better order the definitions of "best available price" and a lot of the issues that are contained in our amendment to the NDP amendment, should be put so we can deal with the specific items that come up in this.

Mr. Chairman: It is in order, but it is not on the record unless you read it.

Mr. Ward: Do I have to read Mr. Swart's amendment in full?

Mr. Chairman: No. That was read in.

Mr. Ward moves that Mr. Cooke's motion be deleted and the following substituted therefor:

"(2) In this section, 'best available price' for a drug in a particular dosage, form and strength means the lowest amount, calculated per gram, millilitre, capsule or other appropriate unit for which that drug in that dosage, form and strength can be purchased in Canada for ultimate resale.

"(2a) In determining the best available price for a drug, no account shall be taken of a purchase of the drug for use solely in the treatment of hospital patients and outpatients.

"(2b) In providing for the amounts payable by the minister under subsection 5a(1), the Lieutenant Governor in Council shall prescribe an amount for the listed drug products of a particular drug in a particular dosage, form and strength that is the sum of,

"(a) the best available price for that drug in that dosage, form and strength; and

"(b) a percentage of that best available price that is not less than five per cent and not more than 20 per cent.

"(2c) Despite subsection (2b), if only one product of a particular drug in a particular dosage, form and strength is designated as a listed drug product, the Lieutenant Governor in Council may provide that the amount payable in respect of that product is the cost to the operator of the pharmacy of purchasing the product if,

"(a) the Lieutenant Governor in Council is unable to ascertain the best available price for that drug; or

"(b) the manufacturer of the product contravenes subsection 10a(1).

"(2d) For the purpose of subsection (2c), the cost to the operator of a pharmacy of purchasing a listed drug product shall be calculated in the manner provided for by the regulations.

"(2e) Subsection (2b) does not apply in respect of drugs that do not require a prescription for sale."

Mr. Ward: In putting that amendment to the NDP motion, I recognize

that it is considerably greater in length and that the sections are broken down. I am confident that each of those sections will generate some discussion, but it puts the proposal forward in a more orderly fashion and will enable us to deal with the specifics of the proposal.

Mr. Chairman: I am in an awkward position. As this has been moved, it is replacing the motion by Mr. Cooke and is therefore contrary to it. Unless it were accepted as some sort of friendly total replacement, it would be out of order.

Legal counsel suggests a way of dealing with this would be to start off by suggesting the numbering change here as--I am not sure if it would help, because we already have two (a)s, etc., on Mr. Cooke's numbers. If you had numbers that followed from Mr. Cooke's numbers; in other words, if they started at subsection 2d, I would presume, and went on--

Ms. Baldwin: I think he is proposing this motion as an alternative to Mr. Cooke's motion.

Mr. Chairman: Which is not in order.

Mr. Ward: Again, there could be some working of the numbers. Subsection 2 here replaces subsection 2c, and subsection 2b replaces subsection 2a, but I do think it addresses all the issues.

Mr. Chairman: My difficulty is that essentially it is out of order procedurally to do it this way. The better way to deal with this would be, with the consent of the member, to have an agreement on this or to vote down the initial recommendation and then to substitute this following; that would be in order. Or you could try to take various specific portions of Mr. Cooke's motion and replace them with specific language at that point. However, because they are not exactly what I would call coterminous wordings, that would be a little awkward to do.

We will probably have to deal with Mr. Cooke's motion first and then come back to this. I do not see how I can accept this at the moment. I wanted to give you the chance to read it to be absolutely clear what your intent is.

Mr. D. S. Cooke: If we run through mine section by section, there are areas where the Liberals can try to amend it--that is the appropriate way to go--but I do not consider it to be a friendly amendment.

Mr. Chairman: All right. Maybe this is the best way to operate, and we will have to get advice where we can on the various specific sections. Why do I not start to take us through this and spell it out in the large term in each individual subsection? If there are other amendments coming from either the Liberals or the Tories, please catch my eye and I will find them in order. I will need them in writing as we go through this or we are going to get totally confused.

Let us take subsection 2a as introduced by Mr. Cooke and deal with that. Does everybody have the wording of that and understand what that wording is? If we can, let us take it in its entirety and suggest some amendments to that.

Mr. Ward: I move that subsection 2a be amended by deleting the wording after "minister" and substituting therefor, "under subsection 5a(1), the Lieutenant Governor in Council shall prescribe the amount for the listed drug products of a particular drug in a particular dosage, form and strength

that is the sum of (a) the best available price for that drug in that dosage, form and strength and (b) a percentage of that best available price that is not less than five per cent and not more than 20 per cent."

If the members want to refer to subsection 2b in the page we distributed, that basically gives you the text of the amendments we are proposing for subsection 2a.

Mr. Chairman: In other words, it would now read, "In determining the amounts payable by the minister," followed by "under subsection 5a(1)" and the other wording of your subsection 2b and the others.

Mr. Ward: That is right.

Mr. Chairman: I read it so that the members can follow up on it. That is in order. We can debate that.

Mr. D. S. Cooke: Can you basically tell me what the major changes are other than the 10 per cent versus the five per cent?

Mr. Ward: In terms of--

Mr. Chairman: Excuse me. There is a little lack of clarity in what we are doing. If we were to take what Mr. Ward read into the record just prior to it, which I found out of order under subsection 11(2) that was introduced, and go down to his subsection 2b, it would replace Mr. Cooke's subsection 2a; the words in the second line, "under subsection 5a(1)," would be inserted after the word "minister" in Mr. Cooke's motion, which replaces the 10 per cent base with a five per cent base. Mr. Cooke is asking Mr. Ward what other substantive changes are involved in that.

Mr. Ward: The only other change in there might be one of clarity in that it indicates an amount for the listed drug products of a particular drug and a particular dosage, form and strength. I think that has appeared previously throughout the legislation. The substantive change is in the setting of a lower floor of five per cent as opposed to one of 10 per cent.

5:30 p.m.

Mr. Leluk: I want to speak to that point. It is my understanding that the five per cent does not allow sufficient for a wholesale markup, which is customarily eight per cent; therefore, they would be selling at a three per cent loss. The minimum would impose a hardship on a large number of pharmacies. Therefore, I cannot support that amendment.

Mr. D. S. Cooke: The section Mr. Ward is referring to, about a particular dosage, form and strength and so forth, is that not reflected in my subsection 2c? What we are really discussing here is the five per cent versus the 10 per cent. I concur with Mr. Leluk. We put forward the 10 per cent because, based on the testimony before this committee, the range was eight to 12 per cent; that is what it was costing.

If the government is so concerned about saving money--and we have to be fair at the same time--all it would have had to do was to pursue Bill 94, and we could have saved a lot more money in the next few days and next few weeks than we are talking about in this section.

Mr. Bernstein: I was going to mention a couple of other differences

between the two versions that might help the members of the committee.

There is a reference in the second line of Mr. Cooke's motion to subsections 5(1) and 5(2), whereas the reference in Mr. Ward's subsection 2b is to subsection 5a(1). That is a minor editing difference.

Also, Mr. Ward's section makes it slightly clearer that there is a difference between a listed drug product and a drug. A product is a product of a drug, and it is important in the carrying out of the drug benefit plan and the administration of this act, that this distinction be emphasized. That is one thing Mr. Ward's version does.

Mr. Chairman: To be clear, though, we have agreed that all the language will be cleared up throughout to make that distinction: "drug" will be changed throughout to "drug product."

Mr. Bernstein: This is more than an editing change of the kind you are describing; this is one in the concepts that are used in the act.

Mr. Chairman: I am not sure I understand.

Mr. Bernstein: If you accept my word for it, we can stand it down, but there is a difference in the two things we are talking about.

Miss Stephenson: As a result of the words "particular drug in a particular dosage, form and strength"?

Mr. Bernstein: That is not part of what I am talking about. Mr. Ward's version, in the third line of his subsection 2b, talks about prescribing an amount for "the listed drug products of a particular drug." That wording makes it very clear that there is one thing called drug products and another thing called a particular drug. Later, when one gets to the definition of "best available price" for a drug, it becomes clear that what is being talked about is not the best available price of each product but the best available price of a drug, which may have several drug products. That is why the wording has been arranged in Mr. Ward's motion.

Mr. Chairman: I gather the legal counsel has found another distinction as well.

Ms. Baldwin: Yes. Another distinction is that as Mr. Ward's amendment is worded, what would appear in the regulations would be the sum of the figures. There would be one figure for each drug product rather than prescribing separately the price and the percentage.

Mr. Bernstein: One figure.

Miss Stephenson: Legal counsel just said for each, and that was the question I raised earlier.

Ms. Baldwin: Excuse me; for each drug. What I am trying to get across is that the amount to be prescribed would be one figure rather than the amount and the percentage being separately prescribed.

Hon. Mr. Elston: I want to respond to Mr. Leluk's point as well. We have already incorporated a situation where, if there was a possibility that somebody could not purchase it for the best available price plus percentage, there would be acquisition costs, obviously. Nobody is going to be disadvantaged by that.

In addition, I want to point out very strongly in relation to a number of drugs, although you have said the minimum is an eight per cent markup for the purchase of these through wholesale, that this is not always the case. If we provide a minimum of 10 per cent markup on top of BAP, we are locking ourselves into a larger amount than we would have to. There are indirect--

Mr. Leluk: In answer--

Mr. Chairman: Allow him to finish.

Mr. Leluk: In answer to what you have stated regarding the acquisition costs, I am told this would create excessive documentation, special billing and handling procedures in a very large number of instances. That is my understanding.

Hon. Mr. Elston: I think that is not what is going to occur in practice. There is not always, in all cases with respect to drugs, an automatic markup of some 10 per cent minimum. That just does not take place. There is, in my understanding of the situation, a need for flexibility so that we can declare what a BAP is and work on it on the basis of market information. However, if you lock us into an automatic minimum 10 per cent, you are giving an extra minimum, an extra two per cent over that eight per cent you are talking about.

Mr. Leluk: Five per cent, as we have been told, is low. It is less than the customary markup for wholesalers.

Mr. Chairman: What we clearly have here is a difference of opinion and I--

Miss Stephenson: Mr. Ward's amendment, as it is currently presented to us, would ensure that what is provided in the section of the formulary that deals with the Ontario drug benefit plan is the best available price for the lowest-cost drug, plus an amount that is the negotiated markup, included in one figure only.

My concern is that if the small pharmacy in northern Ontario is unable to achieve that formulary listed price, he is going to have to go through the procedure of providing additional information, even though everyone knows he cannot buy that drug directly from the manufacturer. He has to get it through Drug Trading, and therefore the amount that is going to be charged is going to be at least eight per cent.

I do not think that doing that provides you with the kind of flexibility you are talking about. That is what--

Hon. Mr. Elston: It gives us a bigger range.

Miss Stephenson: Exactly, but it gives you a bigger range in one circumstance because you are going to list one price in the formulary without revealing to anyone that there is any kind of flexibility except in that section of providing additional documentation.

Interjection.

Miss Stephenson: I am not locking into anything. What I am trying to find out is whether when you are going to list one price, which is the sum of, in the formulary for ODB, and you are going best available price with a

markup, which is flexible, the only way you can exercise flexibility is by requiring of the pharmacist a significant amount of additional documentation in order to provide for that flexibility. I really thought you were thinking of something a little more rational than that.

5:40 p.m.

Mr. Ward: I wanted to address the issue of the floor we are proposing as opposed to the original amendment. My understanding in talking to Dr. Psutka and in looking at some of the information on pricing that has been available to us, particularly in the area of single-source drug products, is that you do not necessarily have market forces at play to the extent that you do with interchangeable products. After all, if there is only one source, then those traditional market forces do not come into play. The markup on single-source drugs averages in the neighbourhood of six to seven per cent. If we are to put into place legislation that is also in the interests of the consumers of this province, I find the 10 per cent ceiling unacceptable. It will result in higher costs to the consumers and taxpayers of this province in terms of the costs of the plan.

Mr. D. S. Cooke: There is another aspect of best available price that Mr. Ward is not addressing. There is the inventory cost and the price at which a small pharmacist can get it.

The eight per cent might be Drug Trading, but there was other evidence presented before the committee that it can go as high as 12 per cent. I know your government has tried to protect the small pharmacist by putting in the other section on a minimum of acquisition costs. I am concerned that, if the floor is so low, we are going to end up setting the formulary at acquisition cost for a good number of pharmacists. I have not heard any evidence from the government, other than the eight per cent for Drug Trading, that would justify the five per cent.

Mr. Chairman: Is there discussion from the minister?

Hon. Mr. Elston: I have a couple of points. One is that the concept of best available price is the idea that people are going to be able to purchase it at that. If you are saying that is not going to take place, that obviously undoes the whole concept.

Mr. D. S. Cooke: But--

Hon. Mr. Elston: Hear me out.

Mr. D. S. Cooke: The 10 per cent is in there for the people who cannot get it at the best available price.

Hon. Mr. Elston: The other item you may want to consider is that more than 50 per cent of single-source drugs are not purchased through wholesalers. They are purchased directly. It seems to me that to put a floor of 10 per cent when we know there is not an automatic eight per cent wholesaler upcharge on that really undoes this situation of trying to come to grips with a more reasonably priced product.

Miss Stephenson: I find that argument difficult to accept, since I am sure that more than 50 per cent of many drugs are purchased directly from the manufacturer. To suggest that, because 50 per cent of single-source drugs are acquired directly from the manufacturer, it ensures there should not be a reasonable markup--I have some concern about that.

What I want to know is whether you are willing to look at best available price in the concept Dean Gordon provided for us; that is, it was the best price for a drug product, if you like, in a certain quantity, which would be available to all the pharmacies in Ontario, with an additional markup which looked after the costs of storage, the costs of acquiring it, the cost of transportation and whatever.

Mr. Chairman: To this point, we have had a negative response to that suggestion.

Miss Stephenson: To Mr. Ward's motion. It also says nothing about quantity.

Mr. Chairman: That is right. Is there further debate on Mr. Ward's motion on amending Mr. Cooke's amendment, subsection 11(2a)? Is there no further debate? All right.

All those in favour of the motion by Mr. Ward, please so indicate.

Those opposed?

Motion negatived.

Going back to Mr. Cooke's motion, of which you will remember the wording, is there further debate on that?

Miss Stephenson: Are we talking about subsection 11(2a)?

Mr. Chairman: Subsection 11(2a) only, yes. We are doing it section by section to allow Mr. Ward to propose the amendments that were out of order as a whole.

On Mr. Cooke's motion to subsection 11(2a), all those in favour, please indicate.

Those opposed?

Motion agreed to.

Let us move to his subsection 11(2b), which I will read so that we are clear about this.

"Where the Lieutenant Governor in Council is prescribing the best available price of a drug under subsection (2a) and the drug is an interchangeable product, as defined in the Prescription Drug Cost Regulation Act, 1986, the amount prescribed shall be the best available price of the least expensive product that is interchangeable with it." Is that the correct wording?

Miss Stephenson: "With which it is interchangeable."

Mr. Chairman: Shall we just change the final words to "with which it is interchangeable"? Is there any discussion or amendment?

There being none, all those in favour of Mr. Cooke's subsection 11(2b) amendment, please indicate.

I need to have peoples' hands up if they are voting in favour of this. It is carried unanimously.

Motion agreed to.

Mr. Chairman: On subsection 11(2c), "In this section, best available price, in respect of a listed drug, means the lowest price at which the manufacturer of that drug supplies to purchasers in Ontario the particular dosage form and strength of the drug." Is that the correct wording?

Miss Stephenson: May I propose my amendment to that?

Mr. Chairman: Yes, that is in order.

Miss Stephenson: I propose to amend Mr. Cooke's motion to read, "In this section, best available price means the lowest price at which the manufacturer of each product supplies to the purchasers in Ontario the particular dosage form, strength, package size and quantity of their product, which price shall be prescribed by the regulations."

Mr. Chairman: Where are you getting that from, Bette? Is that from your motions?

Miss Stephenson: I will write it down for you.

Mr. Chairman: If we have a copy of it around in something else, I can just use that if you want.

Miss Stephenson: May I use the bottom of that?

Interjection: Yes.

Mr. Chairman: My shorthand is not what it once was. Mr. Jackson, you had a question, but it was on Mr. Cooke's motion, was it?

Mr. Jackson: Yes. In the front section, I am confused. It was originally proposed that it be put in definitions so it would apply to all references. Does this mean that only in this section we have a definition of best available price, or does it mean that in all sections, best available price shall mean the following?

Mr. Bernstein: It does not arise anywhere else, as far as I know.

Mr. Chairman: There is a stood-down reference to best available price on the first page, as I recall.

Interjection: If I remember correctly, it occurs in section 11, does it not?

Mr. Chairman: I think it did, actually; yes, that is true.

Mr. Jackson: What advice do we have from the legislative counsel on the terms of the form?

Ms. Baldwin: I might suggest to the committee that if it turns out that best available price is mentioned in sections other than this one, the committee should consider at that point putting the definition back into the definitions section. If it is only mentioned in this section, we might as well just leave it here.

Mr. Chairman: If that is all right with you, Mr. Jackson, we will keep our eyes open for that. I have already indicated to Dr. Stephenson that I will be at least raising the issue with the committee about reopening definitions. We could handle it at that stage. Mr. Ward, did you want to discuss the amendment by Dr. Stephenson?

Mr. Ward: I had an amendment to the amendment.

Mr. Chairman: Do you have another one?

Mr. Ward: Yes, I do. It is with regard to after "the lowest price or amount" or whatever Dr. Stephenson's wording is, that we insert "calculated per gram, millilitre, capsule or other appropriate unit." I think we have talked about this many times, about the need to establish, when we are talking about price, that it is per unit. I think that is a friendly amendment.

Miss Stephenson: That is included, because when you say "particular dosage, form and strength," that specifically meets those requirements which you are suggesting.

Mr. Ward: I know that we have added it in elsewhere and I do not think previously we were satisfied that it did address this.

Miss Stephenson: Where did we add it in elsewhere?

Mr. Ward: In reference to unit.

Mr. Chairman: Before we get lost in this, as soon as Dr. Stephenson's amendment--

Mr. Ward: One example is in clause 10a(1)(a).

Mr. Chairman: At present, if it is not a problem for you--

Mr. Ward: I am just keeping it consistent.

Mr. Chairman: --the wording is in Mr. Ward's subsection (2) in the third paragraph down.

Miss Stephenson: Where in the rest of the bill have we included--

Mr. Ward: Maybe it was the one you missed; I am not sure. Was it in clause 10a(1)(a)?

Mr. Chairman: I believe we did get down to this whole question of the definition, but I cannot remember. It is the question about calculating by gram, millilitre, capsule or other--

Miss Stephenson: Is it in your reviews?

Ms. Baldwin: I believe that has come up before.

Mr. Chairman: I remember a discussion; I do not remember any--

Miss Stephenson: I think we talked about it, but I cannot remember any section of the bill where it has been included.

If you want to suggest that a particular dosage form, strength or unit and quantity of the product--because the quantity, I think, is important in terms of best available price.

Mr. Chairman: Why do I not just read this out?

It would now read in this section, "best available price means the lowest price at which the manufacturer of each product supplies to purchasers in Ontario a particular dosage form, strength, package size and quantity of their product." This is what we have before us at this point. We have already discussed the reasons for this. I do not think we need to go through that any more.

Miss Stephenson: David is nattering something.

Mr. Bernstein: I am sorry. It was going so fast, I did not hear it. I was trying to write it down.

Mr. Chairman: I am sorry. Let me hand it this way to this legal counsel and then back to you. Mr. Cooke, did you have a thought you wished to make on this?

Mr. D. S. Cooke: I do not understand why Dr. Stephenson feels we need to list a price for every brand of drug.

Miss Stephenson: I was not saying that. The best available price is calculated as a result of collecting that information. Is that not true?

Mr. D. S. Cooke: You are dealing with Bill 55 when you make that kind of amendment.

Miss Stephenson: No, I am not. Best available price has the same connotation for both bills, truly, because what you are talking about is a specifically calculated best available price for the Ontario drug benefit plan. You just stated that it must be the best available price of the least expensive product that is interchangeable.

Mr. D. S. Cooke: Right.

Miss Stephenson: All we are saying is that best available price has a meaning, and that meaning should be exactly the same for both bills. You use it differently in one bill than you do in another; that is all.

Mr. D. S. Cooke: What would they pay under the ODB?

Miss Stephenson: Exactly what it says here, "the least expensive product."

Mr. D. S. Cooke: So why do we not just publish the one price?

Miss Stephenson: I am not saying you have to publish any price in this. All I am giving you is the definition of best available price.

Mr. Chairman: We are again getting into the debate that was held earlier, except this is not to do specifically with the publishing of the price but in determining the definition.

Miss Stephenson: The ministry will publish one price for interchangeable products within a group and that will be in a publication that is attached to the formulary, is it not? If it is going to be within the--what?

Hon. Mr. Elston: If you are trying to list a multiple series of prices, that is not the concept we were talking about. I think you are talking about us getting all the marketing information to provide us with a detailed listable price. I understand that--

Miss Stephenson: That is right, yes.

Hon. Mr. Elston: However, that is not where that gets us. In fact, it causes us to get to something much different than that, in my reading of it.

Miss Stephenson: Oh.

Hon. Mr. Elston: It goes to each drug product and all these other package sizes, etc., and that really undoes the concept of best available price having been listed as one item in the ODB.

Miss Stephenson: However, the best available price for any drug product must be for that drug product or the like drug product in the same dosage form, in the same unit, in the same strength, in the same size. If they are 1000s or 10,000s, it does not matter. The best available price means that somebody who is going to buy a 10,000 bottle, whether he buys it from the wholesaler or directly from the manufacturer, for the quantity in that package size, he is going to pay the same price. That best available price is available to all pharmacists in Ontario.

Hon. Mr. Elston: What you just did with that amendment was determine that we would list best available price, plus the minimum 10 per cent. Why would anybody go for any kind of deal whatsoever when you have given him the smallest package size available?

Miss Stephenson: I am not suggesting the smallest package size. All I am saying is that when you define "best available price" for the purposes of this act, you will ensure that if somebody buys 10,000 tablets of hydrochlorothiazide, for example, it will be the same price and that will be the lowest price that is available to all pharmacists in Ontario.

Mr. Chairman: It has been a good, free-flowing debate, but I am really worried about what is getting picked up by Hansard and what is not, because the interchanges have often been within the sentences of each other. I hope we are getting the debate down.

Mr. Ward, you caught my eye. Did you want to make an amendment?

Mr. Ward: I wanted to clarify whether we were going to have in that amendment some reference to the appropriate unit along the lines of the wording that was indicated. If it merely says package size, there is a potential for suppliers to undermine the whole best available price scheme by offering deals on different package sizes.

That is the reason we initially put in a reference to the units in a previous amendment. I am certain we put in that wording, and I am asking to be consistent with the intent of this best available price mechanism. In fact, there is a reference to the price being established "per gram, millilitre, capsule or other appropriate unit," only so that it is not undermined.

Miss Stephenson: You could simply insert "dosage form, strength and quantity" rather than "package size." If you take out the package size, "quantity of the same strength or dosage form" is not going to give them any advantage in terms of going from a small package size of 50 tablets to 1,000 tablets.

Mr. Ward: Does a reference to quantity do that? I am not sure it does.

Miss Stephenson: If they want to supply 10,000 tablets in packages of 100 at the same price as they would supply a jar of 10,000 tablets, what does it matter as long as the price is the same unit price?

Mr. Chairman: We are horse-trading again, but if this not just a straightforward, friendly amendment, it is possible to move an amendment to the amendment. That is the way to approach it, Mr. Ward.

Mr. Ward: I will move an amendment to the amendment.

Mr. Chairman: You would like your amendment to come at the end of this, as legal counsel is suggesting.

Mr. Ward: No, I would like to move an amendment after the word "price" to add the words "calculated per gram, millilitre, capsule or other appropriate unit."

Mr. Chairman: After "'Best available price' means the lowest price"?

Mr. Ward moves an amendment to the amendment that section 11 be amended to read:

"'Best available price' means the lowest price calculated per gram, millilitre, capsule or other appropriate unit at which the manufacturer of each product supplies to purchasers in Ontario the particular dosage form, strength, package size and quantity of their product."

Mr. Ward: That is one amendment. I have another one.

Mr. Chairman: That is the amendment which is in order at the moment and has been spoken to at length. I do not think it needs more at this point. Dr. Psutka wants to make a point.

Dr. Psutka: I just want to try to clarify. In dealing with this matter for over a year and a half now, the concept of best available price has been debated at great length and there seems to be a lot of confusion even now.

The way I understand best available price is that, technically speaking, there is a price out there that usually has been achieved by a purchaser of large quantities. It could be a drug chain, it could be a tendering process or whatever, but there is somewhere out in this country and this province a price--let us say it is 10 cents a tablet for a drug--and it was achieved by somebody buying 10 million tablets at one time. In the case of a chain, that chain had to go out there and put its name or its funds on the line to get that price.

The issue would appear to be here whether we can ensure that wholesalers, or anyone else who wants to purchase 10 million tablets, can get that price. That is what this whole BAP thing hinges on. That means,

therefore, that a wholesaler or whoever would be able to buy at 10 cents a tablet, which means we should not have to talk about package size or such things because we are talking about unit dose.

6 p.m.

The listing should reflect the cost per tablet and it should mean that anyone can get it. If we can find that price, then we have been stating we will put some sort of an upcharge, or whatever the word is, on top of that. Technically speaking, when you come down to it, it should be very close to 10 per cent, 20 per cent or whatever it is, on the actual acquisition cost. It is another way of saying it. That is what it comes down to, because it is a pretty low price. When we get off into package sizing, therefore, there is a concern--

Miss Stephenson: We took that out.

Mr. Chairman: Just to be clear about this because that is not what I have--

Dr. Psutka: We want to make sure. Otherwise, games will be played on package size.

Mr. Chairman: Dr. Psutka is recommending that the amendment by Mr. Ward should take out the last phrase about "the particular dosage form, strength, package size and quantity of the product" and leave in what he had, so it would read as follows:

"'Best available price' means the lowest price calculated per gram, millilitre, capsule or other appropriate unit at which the manufacturer of each product supplies to purchasers in Ontario the particular dosage form, strength and quantity of their product." We are just taking out the words "package size."

Miss Stephenson: One of the sections I think you did not approve --and I am not sure whether it was included in the first definition section of Bill 54--was the requirement that for listing manufacturers had to be willing to sell dosage unit quantity at the same price to all purchasers in Ontario. If they were not willing to do that, then obviously their products were not going to be listed in the formulary.

All we are doing here is ensuring that best available price relates to that requirement of the manufacturer to sell to all purchasers of that quantity at the same price. Otherwise, there would be a dreadful disadvantage wreaked upon those who were not able to purchase a large quantity and had to depend on the wholesaler to purchase the large quantity.

Mr. Chairman: This is what we did in the conditions for listing under clause 10a(1)(a).

Miss Stephenson: Right.

Mr. Chairman: For members, that is on the sheet that has already been prepared for you by legal counsel.

Miss Stephenson: That relates directly as well to the best available price for the product which is to be listed.

Mr. Chairman: I do not want to cut off debate, but I am not sure

what more we can gain from debate at this time. I am wondering if we should call the question on this.

Mr. Bernstein: May I say there is more than just a slight difference in including or not including the reference to quantity. The reference to quantity, as this motion is worded, would make the meaning of this definition quite different from the meaning Mr. Ward's motion presumably intends. Mr. Ward's motion is directed towards a unit cost, meaning a unit of volume or other measurement, capsule, or something like that.

To leave the word "quantity" in the definition that is proposed by the opposition would mean that the regulation would provide for an amount for a certain specified quantity. If that quantity happened to be 1,000 capsules, the amount would be whatever the cost of 1,000 capsules is. If it happened to be 17 packages, it would be a requirement for the regulation to prescribe another amount. It would not be a unit amount; it would be whatever the charge was for that quantity.

Mr. Chairman: I understand your argument, Mr. Bernstein, but the amendment I have includes both these things. I have read it now a couple of times and I am not sure--

Mr. Ward: We should just vote on the--

Mr. Chairman: No. Let us be very clear about this. You have just heard an argument which says that adding "quantity" at the end of this takes away from the unit price definition you put in. What I have is:

"'Best available price' means the lowest price calculated per gram, millilitre, capsule or other appropriate unit at which the manufacturer of each product supplies to purchasers in Ontario the particular dosage form, strength and quantity of their product."

That is what we would be voting on, first on your amendment to that effect and then on Dr. Stephenson's amendment and then back to the main motion, as amended. Is there any further discussion?

Miss Stephenson: "Calculated per gram, millilitre, capsule or other appropriate unit " is a series of non sequiturs: "per gram" or "per millilitre" is appropriate; "per capsule or other dosage form" is appropriate as well, but to suggest that "by unit" is based only on the per gram or per millilitre or per capsule is not. Containing what strength?

Mr. Chairman: All I can tell you is that is what I have before me and what you have before you.

Mr. Ward: The words "dosage form and strength" are retained.

Mr. D. S. Cooke: The per unit cost is, in concept, the lowest per unit cost. Is Mr. Ward willing to withdraw his amendment, vote on Dr. Stephenson's amendment and then place his amendment on my subsection 2c?

Mr. Ward: I am prepared to do that.

Mr. Chairman: What a circuitous route to come to this end. I understand what you are suggesting, Mr. Cooke. Do we understand the order in which we will deal with this? We have a motion before us at the moment. Are you now withdrawing the motion?

Mr. Jackson: If they withdraw their amendment, why can they bring it forward again?

Mr. Chairman: They are withdrawing an amendment to an amendment. They cannot place it again on that amendment, but there is no reason why, if it were in an appropriate location, they could not amend another section or a section that has not been voted on as yet. That would be possible.

I understand now from you, Mr. Ward, that you do not wish to amend Dr. Stephenson's motion. Dr. Stephenson's motion would then read:

"'Best available price' means the lowest price at which the manufacturer of each product supplies to purchasers in Ontario the particular dosage, form, strength and quantity of their product."

That is what we will take the first vote on. Any further debate on Dr. Stephenson's motion? All those in favour of that motion, please indicate. Those opposed? That is 6 to 4.

Motion negatived.

Mr. Chairman: We will now go back to discussion of Mr. Cooke's subsection 2c. Mr. Ward moves that subsection 2c be deleted and the following substituted:

"In this section, 'best available price' for a drug in a particular dosage form and strength means the lowest amount calculated per gram, millilitre, capsule or other appropriate unit for which that drug in that dosage form and strength can be purchased in Canada for ultimate resale."

Just to keep it in order, what you are moving is that after the words, "best available price" you have the words, "for a drug in a particular dosage form," etc. That way, you are not--

Miss Stephenson: What does "ultimate resale" mean? Do you mean somebody is purchasing it and hoarding it and then eventually is going to sell it again, or are you just talking about retail sale?

Mr. Chairman: Would you like to change that?

Miss Stephenson: To "for wholesale or retail sale."

Mr. Ward: Do you prefer "for wholesale or retail sale"?

Miss Stephenson: Yes. This sounds awfully devious and somewhat dishonest.

Mr. Ward: Not dishonest.

Mr. Bernstein: The word "ultimate" is there because the purchaser may not be the--

Miss Stephenson: May be a wholesaler.

Mr. Bernstein: It may be the wholesaler.

Miss Stephenson: That is right. He is the penultimate purchaser, but I do not think you want to get into that kind of nitpicking.

Mr. Ward: We could end it at the word "Canada."

Mr. Chairman: You can change your motion any way you like, Mr. Ward. Do you wish the language to stay as you have indicated?

6:10 p.m.

Mr. Ward: I do not think the deletion of the words "for ultimate resale" has any impact, does it?

Mr. Chairman: Mr. Ward is suggesting that the last three words are not required for his motion to amend Mr. Cooke's motion on subsection 2c, replacing all the words following "best available price" with the words you have been told about. We have had a fair amount of discussion on this unit price.

Mr. D. S. Cooke: I have no problem with the per unit cost. I thought the amendment was going to take a different form. I have a question of the ministry. We have now moved to the best available price in Canada. We have another section of the bill that says if you cannot get the information on the best available price, you go to acquisition cost. The minister has said to us before that he cannot get the information on best available price outside of Ontario. Has his position changed and can that information not be obtained? I do not want us to put a section here that is going to result in best available price being completely unattainable.

Mr. Chairman: We will handle this as a question in a moment, but if you wish to change it amendments are in order.

Mr. D. S. Cooke: I know.

Hon. Mr. Elston: I have indicated that we have problems sending inspectors in to get records from manufacturers and others who are settled outside of Ontario. We have no problem getting information from outside of Ontario, particularly from people who are dealing--

Mr. Chairman: But within Canada.

Hon. Mr. Elston: Within Canada. We can get information from Saskatchewan and British Columbia for instance and we have information as well from the Intercontinental Medical Statistics, which is the national drug information system. We can get information in Canada, but we cannot send our inspectors all over the world to enforce the act. It was in the particular part of the act that I was saying we would have difficulty sending inspectors.

Mr. D. S. Cooke: You have said in the committee before that it might not be entirely fair to compare Saskatchewan prices with Ontario prices.

Hon. Mr. Elston: Not in all cases.

Mr. D. S. Cooke: If we put "purchased in Canada," then we will be comparing Saskatchewan prices with Ontario prices.

Hon. Mr. Elston: We have all information in front of us though about where people are purchasing these drugs and then bringing them in for distribution in Ontario. That gives us a better reading of the market that is determined for the purposes of drugs.

Dean Gordon indicated that he was quite concerned that we, as a large market for drugs, would be able to use our ability as a purchaser to the advantage of the taxpayers. That means being able to sample the market right across Canada with respect to the information. That then becomes the best available price for our purposes.

Mr. Chairman: If there is a disagreement on this, then the options are either to vote against or to move an appropriate amendment because it seems the government wishes to maintain the word "Canada".

Miss Stephenson: I would move that the section be amended to terminate after the word "purchased."

Mr. Chairman: That is in order.

Miss Stephenson: My concern is that if it is not possible to verify by inspection of the appropriate records of the manufacturers outside of Ontario, how is the minister going to verify the figures that are transmitted from various other jurisdictions? I am not suggesting that they will not be accurate, but I am suggesting that he will not have the power to verify those. Therefore, it would be wiser to ensure that we do not include a word or a phrase for which he has no power or capacity for verification.

Hon. Mr. Elston: I believe in the integrity of Grant Devine, and Jim Nielson from BC.

Miss Stephenson: I believe in the integrity of 99 per cent of all human beings, which is something you do not, but that is all right.

Hon. Mr. Elston: That is not right.

Miss Stephenson: Obviously you do not--

Mr. Chairman: We were doing so well up until this point.

Miss Stephenson: Yes, but after the kinds of remarks that were made by his leader today, I am not about to be friendly to anybody, thank you very much.

Hon. Mr. Elston: It is tough on me.

Mr. Chairman: None of us can predict the language of our leaders. I am sure this is true.

Dr. Psutka: It may be a lengthy point, but on this Canada thing in the last little while, because we have been aware of the best available price proposal, we have been trying to come to grips with that based on the best available information we have right now. We have gone out and looked at some of the drugs, using the information we have available to us which, by the way, is Canada-wide. We have other provinces; we have tendering; we have IMS; and we have the manufacturers themselves.

If you recall, when we were intending to publish the last formulary, we asked the manufacturers to send us their proposed actual selling price. We have a lot of numbers and it is very difficult for us at this point to determine what is the best available price. What we are saying here is that if we do not have data from right across the country, it is going to be very difficult to come to that best available price. Without really going around

and determining whether the data sent to me is the best available or the selling price, we will never be able to come to that price without having that ability to look at Canadian-wide data.

I would like to point out also to everybody in the room that there is a quality assurance of drugs or Quad committee where people from the various provinces are meeting on a national level and it is becoming recognized by every province that drug pricing is probably a national problem rather than a provincial problem.

Mr. D. S. Cooke: It could be international too.

Dr. Psutka: It potentially could be but it is not at this point. If we are going to do the best for the taxpayers of this province, we need that data, which has to be shared and used by the people who will be involved in this program, to determine that price. The price, I take it, is going to be something that will be made public and obviously is something that people will have to defend if they are going to live with it, as far as that goes.

Mr. Ward: I want to ask a question of Dr. Psutka. During the discussions that we had throughout the public hearing process one of the concerns that was consistently expressed was that small, independent pharmacists should be able to obtain a product at the same price as anybody else. That was one of the real concerns that was enunciated as the best available price process was bandied about. Is Dr. Psutka aware whether large chains merely purchase their products from within this province or if, by the volume they buy and their size, they are able to obtain better prices and products from outside of this province? I do not think the small, independent pharmacist has that ability. Frankly, I see this clause as being of benefit to them.

Dr. Psutka: I do not know if I can answer the total question. Right now there would probably be no reason for a large chain to purchase outside of the province, whereas I could see that in the future there could be trans-shipping and things like that if they were just looking for a price from this province.

On the other hand, the best available price presumes that more than likely the little guy will be buying from the wholesaler because the wholesaler will be able to go out and get the price that, basically speaking, only the large chains have been getting to this time. The gamble there is that the manufacturer may decide that the deal he was giving to the chain in the past--there are all kinds of reasons for these deals. They are not just drugs; all kinds of other things go with them--may not be available. They may decide that they do not want to give that break to anyone, as it were. It is going to be an interesting phenomenon to watch this develop.

Mr. Bernstein: Mr. Chairman, may I say something?

A place has to be identified. Otherwise, an amount for which a drug can be purchased, without indicating where, would throw it open worldwide. Presumably if products were being sold in the US, that price would also be taken into consideration. As to what that place should be, I will point out that to make a contract of purchase you do not need to have very much baggage with you and the location of the actual purchase can be virtually anywhere. That does not necessarily mean the place where the product is manufactured or the place where the product is delivered.

6:20 p.m.

Recognizing that everyone is interested in having a truly best available price in Ontario, it would be a shame if by accident the very large purchase that produced the best available price happened to take place in another province, with that price being perhaps substantially lower than the next best available price that took place in Ontario.

Mr. Chairman: Mr. Burrows, did you want to add something to this before I go to Dr. Stephenson? Then perhaps we can take these votes.

Mr. Burrows: Yes, thank you. A number of things are relevant. First, the Gordon commission stated conclusively that the Ontario market is the largest market in Canada. It is also important to consider that the drug benefit program represents approximately 12 per cent of the national market and as such, if you consider all of the purchases collectively, the Minister of Health is the largest consumer's agent in the country.

To not take into account the relevance to the Canadian situation is probably a disservice to the taxpayer because it would ignore the relevance of purchases through other routes. It is true that purchases outside the province may not be a common occurrence at the present time; however, it is conceivable that purchases outside the province could become the way of business without some indication in this section of the relevance of the national scene.

Let me paint a picture for you. If a chain were able to make purchases in Manitoba or in Montreal and redistribute to Ontario branches of that chain, that data would not be reported in the data base in Ontario. Then, under a best available price definition which was linked strictly to Ontario data, it would be possible to manipulate that in such a way to the advantage of the chain. If those sales were not reported in Ontario, and we were relying on an Ontario data base, those figures would never show up. It is quite conceivable the best available price we could identify would not show up anywhere.

The problem is that in saying, "can be purchased in Canada," we may have it backwards. Perhaps it should be related to the point of final sale and somehow the definition should take into account where those drugs are ultimately going to be sold. It would plug that loophole. We are interested here in reflecting the fact that Ontario is the largest market in the country. We are interested in ensuring that whatever definition we have in place does not provide some loophole that can easily be taken advantage of by people who have a national oriented distribution system.

There is no ulterior motive here but to make sure the definition is as binding as it possibly can be to prevent the kinds of games that have been played in the past.

Miss Stephenson: It seems to me the requirements which we have been willing to place upon manufactures and wholesalers for listing of drugs within the formulary goes a long way to resolve some of the difficulties that have occurred in the past. I do not like the idea of presuming that the entire population of the drug industry is totally dishonest and that is what Mr. Burrows seems to be suggesting by the kinds of statements that he made.

None the less, I believe strongly if we want to resolve this matter to the ultimate benefit only of the purchaser of drugs at the retail level, we would go to the Saskatchewan system, which is to develop a central purchasing agency, and in that way distribute the drugs through all the drug stores.

Centralization is an answer to that I suppose, although it has the potential for causing more difficulty than the difficulty we face so far. I do not believe we want to pursue that kind of direction.

I am not sure anyone was suggesting that the data base which is used is not the information which is collected right across Canada. That is perfectly fine. If we are suggesting that the price for drugs in Ontario should be that which is tendered for the central purchasing agency in Saskatchewan, then why do we not say that?

Mr. Chairman: I would rather not pursue the debate further if we can. We have about five minutes. It would be nice to get this one section over with. People understand there are various perspectives on this. Let me remind you where we are. If you think we need more debate, just tell me and I will open it up again. Essentially, we have an amendment by Dr. Stephenson to an amendment by Mr. Ward of Mr. Cooke's amendment. This is what it would look like if it were all voted for. Then I will take each individual part.

Subsection 11(2c) would read: "In this section, 'best available price' for a drug in a particular dosage form and strength means the lowest amount calculated per gram, millilitre, capsule or other appropriate unit for which that drug in that dosage form and strength can be purchased."

It was initially "in Canada," and Dr. Stephenson's motion is to take away the two words "in Canada."

The first vote will be on Dr. Stephenson's motion.

Miss Stephenson: I suggested that I would be perfectly willing to add "can be purchased for wholesale or retail sale." Actually, it has to be "for retail sale," because it is for ultimate and penultimate sale.

Mr. Chairman: That was taken out. The "for ultimate resale" was taken out.

Miss Stephenson: Yes, "for ultimate resale" was taken out. Then I asked whether we could have it redrafted.

Mr. Ward: To satisfy Dr. Stephenson's concern, going back even to your suggestion that we use the Saskatchewan prices, I wonder whether it is sufficient to add the words "for resale in Ontario." It would clearly remove that as a--

Mr. Chairman: After the words "can be purchased," the words "for resale in Ontario"?

Mr. Ward: Does that satisfy your concern?

Miss Stephenson: "For retail sale in Ontario" is the definition I would like.

Mr. Ward: "For wholesale and retail sale," or "for retail" only?

Miss Stephenson: In fact, you are not talking about the wholesale price in this section. You are talking about the retail sale and you are talking about the price that comes either from the wholesaler or from the manufacturer, so it is in fact retail sale.

Mr. Chairman: I am gathering that this is considered a friendly amendment by Mr. Ward to his motion.

Mr. Ward: I think it meets the purpose that was intended by the amendment.

Mr. Chairman: All right. At the moment, then, the words "in Canada" would still be deleted--

Miss Stephenson: Yes.

Mr. Chairman: --and put in Dr. Stephenson's motion. What has been accepted as a friendly amendment is the words "for retail sale" following "purchased," in her case. If her amendment were to fail, it would be following the words "in Canada," or following the words "purchased in Canada."

Miss Stephenson: "Can be purchased for retail sale."

Mr. Jackson: That is not what Mr. Ward intended.

Mr. Ward: I understand Dr. Stephenson's amendment, and we will not be spoiling it.

Miss Stephenson: The best available price we are talking about here is the price at which the pharmacist should be able to purchase that drug, whether it is from a wholesaler or a manufacturer. Right?

Mr. Bernstein: No.

Miss Stephenson: It is not right?

Mr. Bernstein: I am sorry; I should not say it is not right. It is a question of what the concept is. I thought the idea was the price at which it could be obtained, perhaps by the operator of a pharmacy or of many pharmacies, or perhaps by the wholesaler so it would become available to the operator of a pharmacy. Presumably, those are the only two main categories you have to contemplate. The second category would not be a purchase by the pharmacy; it is a purchase by the wholesaler, and presumably the wholesaler and the pharmacy have to get together and work out an acceptable cost arrangement.

Mr. Chairman: Let me be clear. Mr. Ward has said that his motion, which is now being amended by Dr. Stephenson, would end with the words "can be purchased in Canada for retail sale in Ontario." Mr. Bernstein is saying there is some difficulty with that. You would probably need the word "wholesale." That is all I have at the moment. So it will stay "for sale in Ontario."

Mr. Ward: "For retail sale in Ontario."

Mr. Chairman: "For retail sale in Ontario."

Mr. Ward: Leaving "in Canada."

Mr. Chairman: Yes. The motion we are voting on, however, is the most recent motion by Dr. Stephenson, which is to delete the words "in Canada." That is specifically what we will vote on first.

6:30 p.m.

Miss Stephenson: I want it understood that when I suggested that deletion, it did not mean the ministry or those making the calculations could not use data available from right across Canada in coming to their determination. If we say it the way it is said here, it means that in all instances the best available price is going to be the wholesale price to the central distributing agency in Saskatchewan, for reasons that are perfectly obvious. I am not sure that is what we want to do.

Dr. Psutka: Can I speak to that? We heard that Saskatchewan has a total market of about 900,000 people. There are about 200 drug stores; does anybody want to comment on that? Perhaps 600 drug stores? It is a very big chain. It goes out and gets a good price. A certain percentage markup is added to it. It is the best available price for the amount of pill being guaranteed for that size of market.

The market in this province is much bigger than that market. If a wholesaler in this province is going to offer a large amount of pills to every independent--which is a very large chain, if you want to look at it in that way--I do not see any reason why we cannot use that kind of price or a low tendered price. We are the biggest market in Canada, the manufacturers are in Ontario and make most of the pills here, so we should get the best prices. I have no problem with adding a percentage markup to that if it is the best price.

Mr. Chairman: The arguments have been made. I have heard this, and it is now being restated. We should take the vote on this. If we need further clarification on subsection 11(2c), let us hear it. Then we can go back to the original.

All those in favour of Dr. Stephenson's motion to delete the words "in Canada" please indicate.

Motion negatived.

Mr. Chairman: I have before me new wording for subsection 11(2).

Mr. Ward moves that after the words "best available price" in Mr. Cooke's motion, subsection 11(2) read: "for a drug in a particular dosage form and strength, means the lowest amount, calculated per gram, millilitre, capsule or other appropriate unit, for which that drug in that dosage form and strength can be purchased in Canada for retail sale in Ontario."

That is what I have before me.

Mr. Reycraft: We have a problem with that.

Mr. Chairman: I thought you might have. I gather there is some desire to add "wholesale" to this.

Mr. Ward: That would make it "for wholesale or retail sale in Ontario."

Mr. Chairman: Is there any further discussion of this?

Miss Stephenson: Is the best available price for a drug going to be calculated on the wholesale price?

Mr. Chairman: Can anyone answer that? Is the best available price going to be based on wholesale price?

Mr. Bernstein: As I understand, it could be. If the wholesaler or retailers such as Drug Trading were to purchase from the manufacturer at that price--

Mr. D. S. Cooke: Some people do not use wholesalers.

Mr. Chairman: Some people do not use their microphones either.

Miss Stephenson: That is the whole point. In some circumstances, the wholesaler is not used. Then the best available price could never be the price determined by the wholesale price.

Mr. Bernstein: That is what the percentage is supposed to take care of.

Miss Stephenson: I remind you that clauses 11(2b)(a) and 11(2b)(b) deal with the best available price of the drug and prescribe a percentage of the best available price to be added to it. That percentage is what you are talking about; it is not a part of "best available price" as defined. The best available price is the cost of the drug plus the percentage; so you have to define it. You are adding and subtracting percentages inappropriately.

Mr. D. S. Cooke: Other sections of the bill talk about what a pharmacist gets paid. You cannot read just one section and assume that is the whole bill. Mr. Ward's amendment is fine. It actually brings it completely in line with what my original section suggested, except now we talk about unit costs.

Mr. Chairman: I gather there is a difference of opinion here. Can we take the vote? I do not want to look at the clock at this point.

Mr. Ward: Take the vote.

Mr. Chairman: Do you understand the wording of this?

Miss Stephenson: No.

Mr. Chairman: The wording is as follows. Whether or not you agree with it is another matter.

11(2c) "In this section, 'best available price' for a drug in a particular dosage form and strength means the lowest amount, calculated per gram, millilitre, capsule or other appropriate unit, for which that drug in that dosage form and strength can be purchased in Canada for wholesale or retail sale in Ontario."

Dr. Psutka: Can I explain that?

Mr. Chairman: Yes.

Miss Stephenson: You are going to have to explain it, because you have just said the best available price does not include the percentage. The best available price is the best available price of the drug plus a percentage. Mr. Bernstein says the wholesaler, when he sells it, includes the percentage added by the wholesaler.

Dr. Psutka: I will try to explain it in the way the OPA explained it to me. If I am wrong, the OPA might want to correct me.

Miss Stephenson: Could we ask the OPA to explain it?

Dr. Psutka: I just want to make sure I heard them right. Basically, the BAP, best available price, is the unit cost of the medication. The percentage of markup, which could range at this time between 10 per cent and 20 per cent, is then added.

That is available. If an independent buys it through a wholesaler, the wholesaler will take his eight per cent, which obviously comes out of the 10 to 20 per cent spread, or upcharge. This gives him a profit of anywhere from two per cent to 12 per cent. The chain, if it bought direct and avoided the wholesaler, would achieve the total percentage of markup. This means, therefore, that chains buying direct will have a slightly higher profit margin, because they are using their dollars, etc., to get that, whereas the independent, going through the wholesaler, will still have a profit but it will not be as great as the chains'. Is that right, gentlemen?

Miss Stephenson: Of course, but that--

Mr. Chairman: I think we are getting into mathematics. We could take the vote. If there is a major concern tomorrow, I will be happy to have a suggestion to reopen.

Mr. Leluk: You mean Thursday.

Mr. Chairman: Yes. Thank you, Mr. Leluk.

Let us look at Mr. Ward's amendment. I would like to take the vote.

All those in favour of Mr. Ward's amendment please indicate.

Those opposed.

Motion agreed to.

Mr. Chairman: In effect, we should make Mr. Cooke's motion as amended. It is the same wording. All Mr. Ward did was add, after Mr. Cooke's words, "In this section, 'best available price' for a drug of a particular dosage," etc. It is the same wording as you just agreed to.

All those in favour of Mr. Cooke's subsection 11(2c), as amended, please indicate.

Those opposed?

Motion agreed to.

The committee adjourned at 6:39 p.m.

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

ONTARIO DRUG BENEFIT ACT
PRESCRIPTION DRUG COST REGULATION ACT

THURSDAY, MAY 1, 1986

STANDING COMMITTEE ON SOCIAL DEVELOPMENT
CHAIRMAN: Johnston, R. F. (Scarborough West NDP)
VICE-CHAIRMAN: Reville, D. (Riverdale NDP)
Allen, R. (Hamilton West NDP)
Andrewes, P. W. (Lincoln PC)
Baetz, R. C. (Ottawa West PC)
Davis, W. C. (Scarborough Centre PC)
Jackson, C. (Burlington South PC)
Miller, G. I. (Haldimand-Norfolk L)
Offer, S. (Mississauga North L)
Reycraft, D. R. (Middlesex L)
Ward, C. C. (Wentworth North L)

Substitutions:
Cooke, D. S. (Windsor-Riverside NDP) for Mr. Allen
Leluk, N. G. (York West PC) for Mr. Davis
Stephenson, B. M. (York Mills PC) for Mr. Andrewes

Clerk: Carrozza, F.

Staff:
Baldwin, E., Legislative Counsel

Witnesses:

From the Ministry of Health:
Elston, Hon. M. J., Minister of Health (Huron-Bruce L)
Dyer, Dr. A. E., Deputy Minister
Bernstein, D., Director, Legal Services Branch
Burrows, A. R., Director, Drug Programs and Policy Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Thursday, May 1, 1986

The committee met at 3:47 p.m. in room 151.

Mr. Chairman: I have a few matters to raise with the committee. First, before we get to dealing with Bill 54, you have had distributed to you a rough budget for the committee for the spring session, for which we need approval.

Miss Stephenson: I am here.

Mr. Chairman: You are here now, and this is for the money now. This is to include only while we are sitting in the Legislature. There is nothing other than that, except we have placed in $20,000 for advertising, just in case the Legislature were to ask us to take on some other work which required advertising. That is a contingency.

If we have summer sittings of this committee, as I presume we will, we will have to go back for a supplementary estimate. This is for the spring session only this time.

Mr. Reycraft moves the adoption of the estimated budget for the spring session of the standing committee on social development.

Is there any discussion?

Motion agreed to.

Mr. Chairman: We will take this to the Board of Internal Economy for its approval.

Miss Stephenson: I have one question for information. Does it really cost $10,000 to supply coffee for this committee?

Mr. Chairman: Yes, it does.

Miss Stephenson: That is incredible.

Mr. Chairman: I was amazed. The coffee charges are incredible.

Mr. Leluk: It would be cheaper to get our own coffee.

Mr. Reville: It is good coffee.

Miss Stephenson: It is better than the CBC's; there is no doubt about that.

Mr. Chairman: It has always stunned me that that amount is so high. Mind you, it is a drug that we provide free of charge over the counter to the pharmacy lobbies that are here with us.

There are a couple of other matters to discuss. We do not have unanimous consent among the committee members, let alone the House, to sit on Monday evening. It conflicts with some people's schedules, so that is not going to be possible for us. Therefore, I am not sure about how our timing will end up, because we are doing such detailed work on the bills at this stage.

3:50 p.m.

I wanted to inform you, though, that the various deputants for Bill 30 have indicated that the earliest they could come would be next Thursday. I have started tentatively booking them in for next Thursday and then the week on the Monday following that. If we were to finish Bills 54 and 55 by next Tuesday, the order of business would be to have the Minister of Education come in and introduce his amendments. We would then proceed to hear the deputants and go to clause-by-clause. I think May 12 was the earliest we could do that, presuming we would actually finish these two bills by Tuesday evening without having sat on Monday.

I would like to make sure there is no problem with that. You can let me know as a committee if you think the steering committee should meet on this. We have decided that only the six groups would come before us and that we would not be opening the floodgates again on Bill 30.

Father Carl Matthews of the Metropolitan Separate School Board has told me that it should be heard because it represents one in four Catholic students in the province. I indicated to him that I would bring this request before the committee. To do this, however, would mean that we would also have to bring in the Metropolitan Toronto School Board, because it would be able to make a similar argument.

Miss Stephenson: And the Association of Large School Boards in Ontario could even make an even stronger argument.

Mr. Chairman: ALSBO is coming; it is number 6. I suggested to Father Matthews that he might come with the Catholic boards association and ask them to make sure he got some sort of prominence there to reflect his large board status. I said I would bring it back to you to see if you wished to add to the list or if you thought it was appropriate to suggest what I have.

Mr. Keycraft: It would create all kinds of difficulties if we started to open up the procedures to the individual boards again. I respect the fact that it is by far the largest board in this province, but we cannot hear them all.

Mr. Chairman: Agreed? All right. I will talk to Father Matthews as soon as I can.

Miss Stephenson: Has the MSSB gone beyond the Dufferin-Peel Roman Catholic Separate School Board in size? It is the largest separate board then.

Mr. Chairman: I will remind you which groups are coming, so that you have an idea of just how representative they are: the Ontario Teachers' Federation, the Ontario Public School Trustees' Association, the Ontario Secondary School Teachers' Federation, the Ontario English Catholic Teachers' Association, the Association of Large School Boards in Ontario and the Ontario Separate School Trustees' Association. They are by far the largest groups in the province, and we had discussed with them previously the idea of coming back.

Miss Stephenson: The OTF is coming then?

Mr. Chairman: OTF is coming in initially as well. They are attempting an overview, which is a little tough for them.

We are now moving back to Bill 54.

ONTARIO DRUG BENEFIT ACT
(continued)

Consideration of Bill 54, An Act to Authorize and Regulate the Payment by the Minister to Specific Persons on Behalf of Specified Classes of Persons for the Dispensing of Specified Drugs.

Mr. Leluk: I have a point of order. On Monday of this week, it was asked whether there were any further amendments to Bill 54. The answer was clearly no. When we arrived here on Tuesday at 3:30 or 4:45 p.m., we were handed a stack of amendments from the government side. This does not provide our members and caucus with an opportunity to discuss them, or to discuss them with the various interest groups, who were not aware of them.

On Tuesday the minister was again asked if there were going to be any further amendments. The answer was no. At 2:10 p.m. today I was handed five pages of amendments to Bill 54. We do not feel this is fair, since we have not had a chance to look at these or discuss them. I do not know why the Ministry of Health keeps telling us that there are no amendments, yet keeps handing them out.

We can understand that some of these are of a housekeeping nature, but two of them have been dealt with, and the amendments are contrary to those motions. Mr. Ward, you should know about it. That last page is quite contrary to a motion passed here last Tuesday. I want to voice the displeasure of our party with the manner in which these amendments are being handed to us.

Mr. Chairman: I am unaware of these amendments. I have heard of them, but they have not been handed to me yet.

Mr. Leluk: You do not believe in the democratic process.

Mr. Chairman: I am unaware of these new amendments. We can have a bit of discussion about this process. We have a number of options which you should be aware of. If these are matters of a housekeeping nature or things we have already dealt with, there can be motions to reopen them. There has to be unanimous consent to reopen them. That has been provided already once in this committee to do so. If you choose not to accept the new amendments coming in, which is also your right at this stage, you can always report the bill back to the House without them in and then go to committee of the whole to deal with them there, if that is more appropriate for members. I leave that option open to you as well. Those are things which you can decide.

Mr. Ward, do you want to make some comments?

I would love copies of these. I have them now.

Mr. Ward: Almost hour by hour in this committee, this legislation has changed. Last week, in response to the question of whether there would be any more amendments coming in, I did not indicate that there would not be any

amendments, but I indicated they were not of a substantive nature. A lot of amendments that have come in have been just that; they have been housekeeping and tidying up some wording.

The amendments that are here now with regard to section 11 are proposed amendments to an amendment that is already on the table. It is not a government motion--

Mr. Leluk: The motion has been dealt with. It is out of order and you know it.

Mr. Ward: The chairman will rule if it is out of order, not you and not I.

Mr. Leluk: It was passed on Tuesday.

Mr. Chairman: As I say, there are two approaches to take on this if you wish. You can decide that we will deal with these and reopen. For that we need unanimous consent if we are reopening sections which we have already completed. If it is for sections which we have not dealt with already, people may wish to deal with those kinds of amendments differently. I leave that up to you.

There is the possibility for the committee to report back the bill to the House without all the amendments in it and to allow that further debate to take place in the committee of the whole to do the final tidying up of language and that sort of thing.

Mr. D. S. Cooke: I have a suggestion that I want to put in the form of a motion.

Mr. Chairman: Mr. Cooke moves that this committee complete clause-by-clause debate of Bill 54, begin clause-by-clause debate of Bill 55 and if not completed by the end of Tuesday, May 6, both bills be reported back to the House to be completed in committee of the whole and that this committee begin clause-by-clause debate of Bill 30 on Thursday, May 8.

Is the motion understood? It is in order. It is a procedural motion that we proceed with Bill 54 today and then move on to Bill 55. If Bill 55 is not completed by Tuesday, we report both bills back to the House for dealing with in committee of the whole and move on to Bill 30.

Mr. D. S. Cooke: If I can very briefly speak to my motion, about a week or so ago, this committee decided that Bill 94 could not be dealt with before Bill 30 because Bill 30 was of such pressing importance to the boards across the province. Accepting that argument and recognizing that we are going very slowly on these bills, committee of the whole could deal with these, could complete them in just as quickly as we can here, but at the same time, this committee could proceed with Bill 30, which both the official opposition and the government have said are bills that have to be dealt with very quickly.

As I understand it, the interest groups will be ready for presentations a week today and that is the reason for the timing to go a couple more days on these bills.

Mr. Chairman: Is there any further discussion on the motion? We are still required to deal with the other matter I raised separately from this.

Mr. Reycraft: I am interested in knowing the ministry's feeling on reporting Bill 55 back for completion in committee of the whole.

4 p.m.

Hon. Mr. Elston: I do not know. The business of the committee is your own. I believe we should start as quickly as possible on these clause-by-clause items, but I do not wish to restrict your discussion on them. If you are not able to do it in relation to the timing set by your committee members, we will have to do it in committee of the whole House. There is no no other alternative to that. I just want to have the best bill possible. If we need a discussion to make sure we bang it out the best way we can, then we will have to complete whatever is left over if the motion is passed in the committee of the whole House. I do not know how else to respond.

Mr. Chairman: I think it does put the minister in a difficult position. It is clear the less that is finished, the harder the job in the committee of the whole will be. The more we have finished, the easier it is because you have all developed an expertise now in this area which other members in the whole House would not have had and, therefore, it is easier to deal with these matters if we have got through the bulk of things.

Mr. Jackson: A question of clarification. If Mr. Cooke's motion fails, what is our timetable as you understand it?

Mr. Chairman: At the moment, we are proceeding through Bill 54 and Bill 55 until completed and then we will go to Bill 30. I have been trying to notify potential deputants of Bill 30 when that might be to try to set up times that are convenient for them but they know that it is a provisional appearance time at this point. What the clerk was reminding me, and I should pass this on, is that it is always the right of a committee to report a bill in any fashion it wishes or, of course, not to report it. He is suggesting that we could report Bill 55 unamended, if we wished to, but with instruction for it to go immediately to committee of the whole. What Mr. Cooke is suggesting, I think, is probably along that line, that we continue to complete as much as we can by a specific date and then report the rest of it to committe of the whole.

Mr. D. S. Cooke: It has to go to committee of the whole because any member can ask for it to go into committee.

Mr. Chairman: That is right. We can also ask for it in the committee as part of the report and any individual member can ask for it to go to committee of the whole. Then it is raised again in the House.

Hon. Mr. Elston: These members are not apt to be in committee of the whole if they are sitting concurrently in this committee.

Mr. Chairman: Certain members, such as Mr. Leluk and others, obviously would be involved in education discussions here.

Miss Stephenson: With diligence and perseverance, we should be able to move along reasonably rapidly, I would think, with Bill 55 once we have Bill 54 completed, because there should be some parallelism between the two bills and we will have managed to work through most of the difficult sections by the time we complete Bill 54. With any luck, we should be able to complete it today, if we work at it.

Mr. Chairman: I have misled you inadvertently. I am sorry, but there is no possibility that this committee could be dealing with business at the same time as committee of the whole would be dealing with the matter of the pharmacy bill so that there would not be a conflict for members of the committee. It cannot be scheduled that way.

Miss Stephenson: Those of us who will have other committee responsibilities next week may not be able to participate.

Mr. Chairman: That is right. That is always possible.

Mr. Jackson: If I may speak to the motion, I feel that we should proceed in the manner in which the committee was prepared to proceed prior to Mr. Cooke's motion for the very reason that by conducting the discussions and amendments in the House, we will limit our activities and our attention to Bill 30. Therefore, we will not really achieve a speedy completion of one or the other. There is no question that it will be a longer and more arduous process for any parts of Bill 55 that have to go to the committee of the whole. Therefore, I would urge not supporting the motion on those grounds. Rather, we should move through these two bills within committee to their completion and then proceed with Bill 30.

Mr. Reycraft: Our wish is to get on with Bill 30 as quickly as possible. We were pleased to hear earlier this week that we might be able to start as early as Tuesday. Obviously, we are not going to be able to do that. I have a concern, though, about establishing limits now that might see us abandon a bill when we are very near to completion of it. I hope we can complete both by next Thursday afternoon. I do not want to establish that kind of a limit on the committee, so we are going to oppose Mr. Cooke's motion.

Mr. D. S. Cooke: If it helps, Mr. Reycraft, I am willing to change the motion from Tuesday afternoon to Thursday afternoon, which means we have to finish the bills by the end of next week or go back to committee of the whole House. I am concerned we are getting so bogged down that Bill 30 is not being dealt with.

Mr. Reycraft: Let us get at Bill 54.

Mr. D. S. Cooke: If you want to change it to next Thursday, at least we have a set time to finish the bills. The purpose was not to be arbitrary; the purpose was to get on with them.

Mr. Chairman: Are you switching the date on your motion?

Mr. D. S. Cooke: If Mr. Reycraft will support Thursday instead of Tuesday, I will change it. If it goes down to defeat either way, it is irrelevant.

Mr. Jackson: If the government wishes to continue the practice of 12th-hour tabling of amendments, then I caution you about setting time lines. I do not dare to ask the undersecretary of health--

Interjection: Under.

Mr. Jackson:--the under-undersecretary whether he can give us further assurances about substantive amendments in Bill 55. Experience forbids me to ask that question.

Mr. Ward: Then do not ask it.

Mr. Jackson: But I submit it is very germane to the motion on the floor. If you have any other cute packages coming, then be very careful about putting time lines on your activities.

Mr. Ward: I can assure you we do not have them right now.

Miss Stephenson: When we read them, we will read between the lines to find out what the facts are. We guarantee we will be there, will we not?

Mr. Chairman: Mr. Cooke has suggested he will change the date in his amendment from Tuesday, May 6, to Thursday, May 8.

Mr. Cooke moves that this committee complete Bill 54 and begin clause-by-clause on Bill 55. However, if not completed by the end of our sitting on Thursday, May 8, Bills 54 and 55 will be reported to the House to complete clause-by-clause in committee of the whole House.

All those in favour of Mr. Cooke's motion, please indicate.

Those opposed?

Motion agreed to.

Mr. Chairman: So we do not spend too much time on procedural affairs, I will put something to you. Do we have unanimous consent to open up sections we have already passed on Bill 54 for further amendment?

Mr. Jackson: Since you ask whether you can put that, Mr. Chairman, if we are going to open up portions of the bill we have already approved, why are we putting time limits on our activities? Does that make any sense?

Mr. Chairman: It does not. I am supposed to have no opinion on these things. I have to find out whether you want that so I know where we want to go.

Mr. Jackson: Why do you not ask the government?

Mr. Chairman: It has implications not only for the government amendments. We should be clear about that. We have some new amendments before us today, but there have been other suggestions from members for reopening sections we have already heard.

Mr. Ward: On a point of order, Mr. Chairman: I recollect we did vote on some subsections of section 11, but the motion I have is to add further subsections. As far as I am concerned, the section 11 vote was not called in its entirety.

Mr. Chairman: That is different. I am talking about reopening sections that have been voted on; I am not talking about new motions. We can deal with that one separately.

Is there unanimous consent to reopen those sections, or do you want to leave that for committee of the whole? If there is unanimous consent, then we will go through them all. If there is not, I want to speed this up. We can do it clause-by-clause in committee of the whole no matter how we report these bills--any member can ask for that at any time--or we can do it now. Let me know your pleasure.

Mr. Jackson: I think your question is inappropriate at the moment.

Mr. Chairman: We have them before us and you will have to deal with them in a second, because we have amendments now that are for sections you have already completed.

Miss Stephenson: Have we completed section 11?

Clerk of the Committee: No.

Mr. Chairman: The ones I have are for clause 5a(2)(aa), subsections 5a(3), (4) and (5) and clause 11(1)(hb), which we did pass.

4:10 p.m.

Hon. Mr. Elston: Clause 11(1)(ha) was stood down.

Miss Stephenson: What about subsections 11(2d), (2ba), (2e) and (2f)?

Mr. Chairman: Subsections 11(2e) and (2f) were stood down and (2d) was passed. As I recall, some of these have been passed. Do you want to start going through them?

Miss Stephenson: We have not completed section 5a.

Clerk of the Committee: We have completed section 5a but not section 5.

Mr. Chairman: We did take the vote on section 5a.

Ms. Baldwin: Section 5a is a different section from section 5.

Mr. Chairman: That is right. It is a different section. You can make up your minds on this as we go along. Why do we not start off with the amendments to section 11 we have just been given? I am in the hands of the presenters of this.

Mr. Jackson: Can you identify the document for me?

Mr. Chairman: I have one here, for instance, Mr. Ward's motion on clause 11(1)(hb).

Clerk of the Committee: It was stood down.

Mr. Chairman: Is that one that can be done at this point?

Mr. Ward: Can we start with subsections 11(2ba), (2e) and (2f), where we left off the other day? They are adding subsections.

Mr. Chairman: Do you prefer that, Mr. Ward?

Mr. Ward: Yes, if that is okay. That will finish off that section.

Mr. Chairman: Mr. Ward moves that section 11 of the bill be amended by adding thereto the following subsections:

"(2ba) In determining the best available price for a drug, no account shall be taken of a purchase of the drug for use solely in the treatment of hospital patients and outpatients.

"(2e) Despite subsection (2a), if only one product of a particular drug in a particular dosage form and strength is designated as a listed drug product, the Lieutenant Governor in Council may provide that the amount payable in respect of that product is the cost to the operator of the pharmacy of purchasing the product if,

"(a) the Lieutenant Governor in Council is unable to ascertain the best available price for that drug; or

"(b) the manufacturer of the product contravenes subsection 10a(1).

"(2f) For the purpose of subsection (2e), the cost to the operator of a pharmacy of purchasing a listed drug product shall be calculated in the manner provided for by the regulations."

Mr. Ward: The purpose of proposed subsection 11(2ba) is virtually self-explanatory, in that it is excluding hospital purchases from the determination of best available price. The purpose of proposed subsection 11(2e) is that if for some reason a pharmacist is not able to purchase the drug product at the best available price, then he can be compensated his actual acquisition cost.

Miss Stephenson: That is not what it says. It says if "the Lieutenant Governor in Council is unable to ascertain the best available price for that drug." That means it is for that drug throughout the entire province. Is there any requirement within this section that will ensure the Lieutenant Governor in Council through the minister is going to make every effort to determine a best available price before resorting to clause 11(2e)(a)?

Mr. Ward: What do you suggest?

Miss Stephenson: I do not know; I am asking. I find no such assurance.

Mr. Chairman: One thing it would be useful to add in--

Hon. Mr. Elston: "After having made reasonable inquiries."

Mr. Chairman: The minister is suggesting wording that says, "After having made reasonable inquiries." Is it some such specific wording you want in here? Is that sort of an amendment useful?

Miss Stephenson: What is required is some assurance the kind of procedure will be carried out that will attempt to determine there is a best available price for that drug within Ontario.

Mr. Bernstein: I know of no objection to putting in clause 11(2e)(a) "after making reasonable inquiries". The legislative counsel can speak to where it would be located. I do not see any harm in putting in those words. The minister is already under that obligation. That is one of the things that came out of the recent court cases involving the drug plan. I am not arguing.

Miss Stephenson: There is nowhere in the act that says the minister has to do that.

Mr. Bernstein: That is right.

Mr. Chairman: This could certainly imply it, or more strongly imply it, if it were put in here.

Mr. Bernstein: I see no problem in saying in clause (a), "the Lieutenant Governor in Council is unable, after making reasonable inquiries, to ascertain the best available price for that drug."

Mr. Chairman: Clause 11(2e)(a) reads at the moment, "the Lieutenant Governor in Council is unable to ascertain the best available price for that drug." The recommendation is--

Hon. Mr. Elston: I suggest we start at clause (a) and have it read, "after making reasonable inquiries, the Lieutenant Governor in Council is unable to ascertain the best available price for that drug; or"

Miss Stephenson: The difficulty is the use of adjectives.

Mr. Chairman: We can discuss the difficulty, but this is a suggestion.

Hon. Mr. Elston: This is a suggestion I am making.

Mr. Chairman: This would be a friendly amendment by Mr. Ward, if he wishes to make it. If it is acceptable to the minister to put in that kind of wording, then we can discuss if that wording is suitable. Okay?

Hon. Mr. Elston: Yes.

Miss Stephenson: My concern is the definition of "reasonable." I have a problem with that kind of language in legislation. Is it following the procedure established for inquiring? I do not know what reasonable means. If it means exhaustive, then I am happy with it, but someone else might not use that definition.

Hon. Mr. Elston: "Reasonable" is well defined in legal parlance.

Miss Stephenson: It may be in legal parlance.

Hon. Mr. Elston: That is what this is; this is law.

Miss Stephenson: In drafting legislation, it is one of the things that people try to stay away from.

Mr. D. S. Cooke: I have no problem with subsection 2ba, which is fine. I do not understand why we need subsection 2e when we have inspection of pharmacists, we have inspection of manufacturers and we collect all those data. The ministry obviously has the ability to make its best efforts to find out what best available price is, and that is the price it will print.

I do not know why we need a fallback position other than perhaps a reason to go around the original principles of what we have put into the legislation. Maybe we can separate it. I think 2ba is fine, but I do not see the purpose of 2e.

Mr. Chairman: At this stage, would you be interested in doing that? I have a sense we have agreement on that subsection, and I will test the feeling now.

All those in favour of subsection 2ba as read, please indicate.

Motion agreed to.

Mr. Chairman: I will point out that we are doing this slightly out of order, in that subsection 2d has not been debated yet, but we can do this and go back and change the numbering. Since we have it before us and the one does not preclude the other, why do we not just deal with 2e and fix up the numbering as we go along?

Subsection 2e has now been amended to read at the moment, "After making reasonable inquiries, the Lieutenant Governor in Council--

Interjections.

Mr. Chairman: Do we have a refinement? The debate can be, as Mr. Cooke was doing, on the principle of whether you want this subsection as well as on the actual wording.

Miss Stephenson: Is this subsection designed primarily to deal with the special authorizations that relate to very new and innovative drugs?

Hon. Mr. Elston: No, this is designed to deal with the situation where information is not made available to us, so we can establish a best available price for a product.

Miss Stephenson: We have required earlier in the act that the information must be made available.

4:20 p.m.

Hon. Mr. Elston: That is right, but this will give us another option rather than determining that we delist the product. The other option given by this section is that we then list the product at the actual acquisition cost, but only after making reasonable inquiries or whatever. That was a safeguard you suggested we put in there, and I have no problem with that.

What we want is an alternative to not listing a drug product, and this would be that type of alternative. It would be very difficult for us to exclude a patient from receiving a benefit under the Ontario drug benefit plan on the basis that we were unable to obtain information about the best available price.

Miss Stephenson: In that case, it is related only to clause 11(2e)(b), that "the manufacturer of the product contravenes" the act.

Hon. Mr. Elston: It was also pointed out by the deputy that it involves the situation where there is only one product, in other words, a single-source drug.

Miss Stephenson: Then the information provided by the manufacturer should give you the best available price.

Hon. Mr. Elston: That is right, if we are unable to receive information.

Miss Stephenson: Surely a manufacturer is going to provide you with the information if the drug is going to be sold.

Dr. Dyer: The sections were put in for single-source drugs that are essential therapeutic agents. In the event that a manufacturer does not or will not provide us with the information we need to determine the best

available price, that is, the lowest price available in Ontario--it is a difficult obligation to keep--

Miss Stephenson: Then I suggest to you all you need is clause 11(2e)(b), if the manufacturer of the product contravenes the act.

Dr. Dyer: That pertains to subsection 10a(1), which deals with same volume, same price. If we do not have the information to determine the lowest price available in Ontario, we cannot fulfil the requirement.

Miss Stephenson: If that information is not made available to you, is that not a contravention of the act?

Dr. Dyer: If it is a contravention, we do not want to take the product out. That is the only other option for us.

Miss Stephenson: Then surely you are talking about a contravention of the act more than anything else, rather than clause 11(2e)(a), which provides some kind of leeway that sounds just a little as though a skirting action were taking place.

Mr. Jackson: It sounds rather fishy to me, what I often call the haddock approach to government.

Mr. Chairman: I am not sure I am hearing anything new on the debate. We should determine whether you wish the vote called.

Miss Stephenson: Is this a result of your concern that if the manufacturer is not willing to provide information, the product will have to be delisted?

Dr. Dyer: Yes.

Miss Stephenson: If that is so, it is clearly a contravention at least of the spirit of this act, if not the letter. If that happens, all we need is "the cost to the operator of the pharmacy of purchasing the product, if the manufacturer contravenes" whatever sections of this act are appropriate, not only this one but also the one that has to do with listing.

Mr. Bernstein: A problem arises because there are some manufacturers to whom this act will not apply. If they do not operate in Ontario and their sales take place anywhere else in Canada, the provisions requiring them to file information with us may not be enforceable. Technically, they are not contravening the act if it does not apply to them, whereas this proposed amendment gets at the point behind it, which is that we are not able to ascertain the best available price.

Mr. Chairman: Thank you, Mr. Bernstein. If the members understand the reason for the proposal by the ministry, you can make your best judgement on whether you agree with it, but if you understand--

Mr. Jackson: Do you mean we have not done so previously, Mr. Chairman?

Mr. Chairman: No, I am just wondering if you have heard all you need to hear. At the moment, the only wording I have on clause (a) is, "after making reasonable inquiries, the Lieutenant Governor in Council is unable to ascertain." Do I have any change to that from the mover or anyone else?

Miss Stephenson: If that section has to stay in, it would be better as "after the exercise of the best possible efforts."

Hon. Mr. Elston: That sounds good to me.

Miss Stephenson: I do not know what it means, but it sounds more exhaustive than "reasonable" does.

Mr. Reycraft: It definitely does.

Mr. Chairman: Why do we not ask legal counsel what the difficulties are?

Ms. Baldwin: I have a bit of concern. Generally speaking, we do not put "the Lieutenant Governor in Council," that sort of requirement. How do you look behind what the cabinet is doing? Ordinarily, it might be "after the minister has made reasonable inquiries, the Lieutenant Governor in Council may"--

Miss Stephenson: I agree that it is a weird activity for the Lieutenant Governor in Council.

Mr. Chairman: "...after the minister has made reasonable and diligent inquiries or efforts to ascertain...."

Miss Stephenson: I think "diligent and exhaustive" would be more appropriate.

Mr. Chairman: "Has left no stone unturned."

Miss Stephenson: That is right. That is the thing.

Mr. Ward: It seems to me that the subsection is totally consistent with subsection 11(2ba), which according to the update is the wording that was placed there and is necessary in that regard.

Interjection: What is the suggestion?

Mr. Ward: "...designating the product as a 'listed drug product' where the Lieutenant Governor in Council considers it advisable in the public interest to do so, but a product should not be so designated if it or its manufacturer has not met the conditions...." I guess that does not cover it.

Miss Stephenson: That is what I am saying. If that is the situation you want to cover, you do not need clause 11(2e)(a).

Mr. Chairman: The difficulty I am having at the moment is that we are having two debates. We are having a debate on the need for the subsection and we are having a debate on the wording for putting in something that somehow makes it more reasonable to the members. Unfortunately, I am not getting any clear direction on any wording so I cannot say that I have anything here at the moment in terms of rewording clause 2e(a).

Mr. Ward: Is this on subsection 2ba?

Mr. Chairman: This is on clauses 2e(a) and (b)

Mr. Ward: Subsection 2e proper; I take it the wording that is

proposed is not suitable, "after the minister has made reasonable inquiries."

Mr. Jackson: Move it and then you will find out.

Mr. Ward: It is moved.

Mr. Chairman: The suggested wording I have is, "After the word 'if' in subsection 11(2e), the words 'after the minister has made reasonable and diligent enquiries...the Lieutenant Governor in Council is unable to ascertain the best available price for...."

Miss Stephenson: What are we going to do with clauses (a) and (b)?

Mr. Chairman: It comes at that point, at the "if" just before that.

Miss Stephenson: I know.

Mr. Chairman: That is the new wording that is acceptable to Mr. Ward that you are going to be voting on. We can take this into each of these sections if you want or take the three parts as a whole. Is it three parts as a whole? They are integrated. All right.

All those in favour of subsection 2e and clauses (a) and (b), as moved by Mr. Ward, will please indicate.

All those opposed will please indicate.

Motion negatived.

Mr. Chairman: We are moving through subsection 2f, which is now possible because we now do not have a 2e. These are matters that can also be dealt with by committee of the whole House on the recommendation of any member of the House.

We have a recommendation on subsection 11(2d) that I have heard of.

Mr. Ward moves that section 11 of the bill be amended by adding thereto the following subsection:

"(2d) Subsection 2a does not apply in respect of listed drug products designated by the regulations for the purpose of clause 5a(2)(aa)."

Would you like to explain the motion or defer to somebody else?

Mr. Jackson: Will you please direct us to the piece of paper?

Miss Stephenson: It is the penultimate paper in this package we got today.

Mr. Chairman: This is a new subsection 11(2d).

Mr. Bernstein: Strictly speaking, this clause comes after clause 5a(2)(aa), for which there is also a motion that is on the threshold of being before the committee.

Mr. Chairman: It raises the question whether they want to reopen that section.

10:30 a.m.

Mr. Bernstein: The committee can deal with this clause (hb) in--

Hon. Mr. Elston: It is subsection 2d.

Mr. Bernstein: I am sorry. Subsection 2d?

Miss Stephenson: Subsection 11(2d).

Mr. Bernstein: We can deal with subsection 2d because the principle of clause 5a(2)(aa) is still intact although the detail might differ. The explanation is that the provision for prescribing a sum of best available price plus prescribed percentage does not apply in respect of those over-the-counter drugs that have been specified as not having a dispensing fee and having a markup. At least under the current system, it is a markup in lieu of dispensing fee.

Mr. Chairman: This is in order in that the other proposed subsection, which would reopen clause 5a(2)(aa), only changes the wording of it and does not change the existence of that number, so we can deal with it.

Miss Stephenson: Okay.

Mr. Chairman: Is there any discussion on this matter? Do you understand its effect on the OTC nondispensing? It is clear as crystal to Mr. Reville, so the rest of us must also know what this means.

Mr. Reycraft: There must be something wrong with it.

Mr. Chairman: That is right.

All those in favour of Mr. Ward's motion, subsection 11(2d), will please indicate.

All those opposed will please indicate.

Motion agreed to.

Mr. Chairman: Now I may be wrong, but--

Interjection: Clause (hb)?

Miss Stephenson: No. That applies to clause 5a(2)(aa).

Hon. Mr. Elston: If you defeat the amendment, clause 11(1)(hb), you do not need to redo clause 5a(2)aa. If you pass clause 11(1)(hb), you have to amend clause 5a(2)(aa) to comply with clause (hb).

Mr. Chairman: That is right. Because of what you just passed, it would be useful for you to give unanimous consent to reopening clause 5a(2)(aa), so that the clause you just passed makes some sense. Then we will

move on. I will discuss that in a moment, but we should deal with the next one first if there is unanimous consent.

Agreed to.

On section 5:

Mr. Chairman: Mr. Ward, read that into the record while I see where we go next.

Mr. Ward: Are we on clause 5a(2)(aa)?

Mr. Chairman: Yes, clause 5a(2)(aa).

Mr. Ward moves that clause 5a(2)(aa) of the bill be struck out and the following substituted therefor:

"(aa) where the listed drug product does not require a prescription for sale and is designated as one to which this clause applies, no dispensing fee."

Is there a need any further explanation of this?

Miss Stephenson: There is no need for further explanation. After all my arguments the other day, I had to go to my pharmacist last night who told me he had heard about the arguments regarding the lack of dispensing fee for OTCs and was somewhat distressed. He asked whether I knew, and he is absolutely right, that all the effort required to dispense a prescription, if it is a prescription drug, is also required to dispense an OTC under this ruddy act. Therefore, I suggest we eliminate the OTCs from anything and--

Interjection: Eliminate OTCs from the act?

Miss Stephenson: Eliminate OTCs as benefits under the act. I do not know how you do that at the moment, but it really is--

Hon. Mr. Elston: I am sorry, but Mr. Metras just fell off his chair.

Miss Stephenson: That is all right. Rob can afford to fall off the chair.

Interjections.

Miss Stephenson: We would both bounce if we fell off our chairs, but that is all right. At any rate the--

Mr. D. S. Cooke: This will make for interesting reading for some time in the future in Hansard.

Mr. Chairman: Watch out for his ice water in front of you, Mr. Cooke.

Miss Stephenson: There is an argument for not passing this section and permitting the retention of a dispensing fee for OTCs if we retain OTCs as benefits under this act. I find that troublesome. However, if it has to be retained, it seems to me the effort put forward by the pharmacist, which is exactly the same, needs to be rewarded in precisely the same way. Therefore, I suggest this section be deleted or not be--

Mr. Jackson: Not be reopened.

Miss Stephenson: I know we did something to it the other day, which does not help that situation either, but this is not the way to correct it.

Mr. Chairman: The difficulty we have with what you are suggesting is that at this point in the act we have already made those distinctions around over-the-counter drugs. All this is doing is revamping the wording of it, but not the intent of it in terms of the latest subsection we have passed. We would have to go back and reopen that.

Miss Stephenson: Since I made a grievous error, I hope we will be willing to reopen the section to which this applies to correct that grievous error. If we do that, we do not need to do this, which is eliminating the dispensing fee.

Mr. Chairman: For our ordering at the moment, it would be wise to vote on this now. If you can find that subsection after we have cleaned up clause 11(1)(nb), you would then make the recommendation that we reopen. If we have unanimous consent, we can. At the moment, this does not move against the intent of things we have already passed; it just gives further clarification.

Mr. Jackson: We are doing clause 5a(2)(aa). Has the minister consulted with the Ontario pharmacists on this issue?

Hon. Mr. Elston: These were dropped off. I am not sure what time they got to the Ontario Pharmacists' Association today.

Mr. Jackson: I mean this specifically.

Interjection.

Hon. Mr. Elston: Five minutes before. In any event, we said when we were going through the OTC thing before that we wanted to try to duplicate as closely as possible what is happening now. If you want to create a different structure wherein we eliminate OTCs as a benefit, that is a difficult question to consider.

Mr. Chairman: It is not on the floor at the moment.

Mr. Jackson: My question was whether the minister got concurrence from the OPA on the matter of removing a dispensing fee from OTCs?

Hon. Mr. Elston: No, because we do not have dispensing fees on OTCs at the moment. At this point there is a markup in effect that I understand runs around 40 per cent.

Mr. Jackson: Let me ask it another way. Have the pharmacists indicated they would like to be compensated for the work and effort Dr. Stephenson referred to that is involved in the delivery of an OTC nonprescription to an Ontario patient? Have you received a clear statement of their intent?

Hon. Mr. Elston: No, I have not received a clear statement on that account. If you will allow Mr. Bernstein to finish his discussions, I am sure he can carry back a message from a couple of people.

Mr. Chairman: Mr. Bernstein, do you have anything to report back to the committee?

Interjection.

Mr. Chairman: I am not sure we need to clarify at the moment what an OTC is.

Miss Stephenson: Yes, we do. That is the problem. That is why I have been telling you to eliminate OTCs completely as benefits.

Mr. Jackson: I am just trying to understand this. Before I vote on this, I would like to know what consultation has occurred.

Mr. Chairman: As reported by the minister, there has not been consultation on this at the moment. There has been recent discussion between Mr. Bernstein and members of the OPA.

Mr. Leluk: Can we hear from members of the OPA whether there has been consultation?

Mr. Chairman: You know my difficulty with that. You have to keep getting a motion on it. Can I suggest this to you? If you want to have a dispensing fee for OTCs, presumably you would vote against this subsection, which makes redundant the last one we passed. Then we would have to reopen a prior subsection.

Miss Stephenson: Clause (hb).

Mr. Chairman: We will be coming to clause 11(1)(hb) next.

Miss Stephenson: The one we passed yesterday, which was then stood down.

Mr. Chairman: If you want some sort of change, you vote against the section. Otherwise, you support it. I will accept a motion to reopen any section where members more properly wish raise this matter. At the moment, this does not run counter to anything we have already agreed to.

4:40 p.m.

Miss Stephenson: If there is no difference in the action or the professional activity required to dispense an over-the-counter drug in many instances--I suppose that if one is providing aspirin to an individual who has the potential for some gastric vascular problem, the degree of professional responsibility is equally great--I would have difficulty determining in which areas there should or should not be a dispensing fee, except for vitamins. However, vitamins can be equally lethal.

Mr. D. S. Cooke: I am finding this discussion quite bizarre. On the one hand, Dr. Stephenson is saying that over-the-counter drugs should not be covered as benefits.

Miss Stephenson: I do not think they should.

Mr. D. S. Cooke: I know that. On the other hand, you are saying that

they are going to be benefits and therefore we should increase their price by adding dispensing fees.

Miss Stephenson: No.

Mr. D. S. Cooke: As I understand it, there is a markup in the section we have, and there are other ways the pharmacist can be compensated. In combination with yesterday, we have probably been debating this item for about an hour. I suggest we vote on the section.

Miss Stephenson: May I respond to Mr. Cooke's statement?

That is not what I was saying. If they are going to be dealt with as benefits under the act, as prescription drugs are, they require the same kind of professional effort that any other drug does. If they are not benefits under this act or under the Ontario drug benefit plan, the person who has responsibility for purchasing them and taking them is the individual who purchases or takes them, not the pharmacist. You are asking the pharmacist to take responsibility for this act and for dispensing over-the-counter drugs.

Hon. Mr. Elston: Mr. Burrows talked with representatives from the Ontario Pharmacists' Association. They are willing to deal with this section the way it is on the understanding that this will be a topic for discussion with respect to the OPA and our further deliberations on implementing this bill and other parts of the dispensing fee. Their primary position, it is only fair to say, is that they would prefer best available price and a dispensing fee, but that they are willing to let this section go at this stage. That is what I understood to be communicated to me.

Mr. Chairman: I think it will be helpful if the committee does not try to solve all the problems within the pharmacy. It would be best if questions such as this, which as Dr. Stephenson says have a double edge, can be handled in further negotiations.

Let us deal with clause 5a(2)(aa). All those in favour of Mr. Ward's motion, will please indicate.

Motion agreed to.

On section 11:

Mr. Chairman: We will now move to the clauses in section 11 that were stood down: clauses 11(1)(ha) and 11(1)(hb). I do not seem to have those before me at the moment.

Miss Stephenson: Clause 11(1)(ha) deals with the manner of calculating the cost to an operator or the pharmacist.

Mr. Chairman: This has been read into the record already and stood down. The initial motion put forward by Mr. Ward was to add a couple of specific subsections that this would then refer to, subsection 5a(3) or subsection 11(2c).

We will now discuss clauses 11(1)(ha) and 11(1)(hb).

Miss Stephenson: How did we do clause 11(1)(ha) again? Does it read,

"prescribing the manner of calculating the cost to an operator of a pharmacy of purchasing a listed drug product for the purpose of subsection 5a(3)"?

Mr. Chairman: "Or subsection 11(2c)." That is as far as we went on that.

Miss Stephenson: Fine.

Mr. Chairman: I just had a suggestion from the clerk that I think is a good one, or from legal counsel, probably, that we separate out our discussion of clauses 11(1)(na) and (nb). I gather there may be a further amendment to clause 11(1)(hb).

Any further discussion on clause 11(1)(ha)?

Mr. D. S. Cooke: I think I am lost.

Mr. Chairman: We are discussing clause 11(1)(ha).

Mr. D. S. Cooke: Someone has to tell me what this is.

Mr. Chairman: A reminder of the purpose of this subsection might be useful. Can you give us an explanation, Mr. Bernstein?

Mr. Bernstein: The bill provides in several places that the amount payable by the minister is the amount calculated in accordance with the regulations, the cost of acquiring the drug dispensed. This is the regulation-making power that completes this by saying that the Lieutenant Governor in Council may make regulations prescribing the manner of calculating the cost to the operator of purchasing a listed drug product, I recall that this is in subsection 5a(3)--

Maybe I have lost track of that.

Interjection: And subsection 11(2c).

Mr. Bernstein: That was just defeated, was it not?

Mr. Chairman: No, subsection 11(2c) stands.

Miss Stephenson: It was passed before.

Mr. Chairman: It was subsection 11(2e) that was just turned down.

Mr. Bernstein: Is acquisition cost mentioned in subsection 11(2c)?

Miss Stephenson: Subsection 11(2c) is that long amendment that went through the other day.

Mr. D. S. Cooke: All this does is to give you the regulatory power, and then we refer back to the sections that talk about best available price and so forth.

Mr. Bernstein: That is right.

Mr. Chairman: All those in favour of clause 11(1)(ha), please so indicate.

Motion agreed to.

Mr. Chairman: I gather that clause 11(1)(hb) is to be amended further, Mr. Ward.

Mr. Ward moves that subsection 11(1) of the bill be amended by adding thereto the following clause:

"(hb) designating listed drug products that do not require a prescription for sale for the purpose of clause 5a(2)(aa)."

This is the new one that was just handed around today. It is to make it conform with the two subsections we have just passed this afternoon.

All those in favour, please so indicate.

Motion agreed to.

Mr. Chairman: You may recall that we stood down subsections 11(2a) and (2b) before we got to this new subsection, which we have just completed.

Unfortunately, we cannot deal with subsection 11(2), because it refers to clause 11(1)(f), which we have stood down. We cannot proceed unless we now go all the way back to section 5, which we stood down much earlier. We should now go back to section 5.

4:50 p.m.

On section 5:

Mr. Chairman: We will start with subsection 5(1). You have a motion, Mr. Ward. The original states: "An operator of a pharmacy who submits to the minister a claim for payment in respect of supplying a listed drug for an eligible person pursuant to a prescription is entitled to be paid by the minister the amount provided for by the regulations."

I understand there is a new subsection 5(1).

Mr. Ward moves that subsection 5(1) of the bill be amended by inserting after "drug" in the third line "product" and by striking out "by the regulations" in the fourth and fifth lines and inserting in lieu thereof "under section 5a."

Mr. Chairman: Is the reference to section 5a still appropriate, legal counsel?

Ms. Baldwin: I believe so. I will check.

Mr. Chairman: It is? Good. The motion is an amendment we had quite a bit earlier, but we are now coming back to it because we had to deal with these other changes that we just made.

Mr. Jackson: It is on page 6 of the main document.

Mr. Chairman: Thank you. I am trying to find it. Yes, it is the same

wording as on page 6 of Mr. Nigro's compilation. As I understand it, it has been changed essentially to conform with section 5a, which we have passed. Is there any discussion?

Miss Stephenson: What you are reading is subsection 5(1), is it not?

Mr. Chairman: What we have read is subsection 5(1).

Miss Stephenson: Would you please read subsection 5(1) again, as per your amendment?

Mr. Ward: "That subsection 5(1) of the bill be amended by inserting after 'drug' in the third line 'product' and by striking out 'by the regulations' in the fourth and fifth lines and inserting in lieu thereof 'under section 5a.'"

Miss Stephenson: That is fine.

Mr. Chairman: This is best available price as defined under whatever--

Mr. Bernstein: As subsection 5(1) was originally written, it was in the context of a bill that provided only that the amount payable would be provided for in the regulations. However, the committee subsequently adopted section 5a, which spelled out in more detail the provision for the amount payable, including reference to, among other things, the dispensing fee arrived at through section 5b. Now subsection 5(1), rather than connect directly to the regulations, must connect to section 5a so that the circuit goes through.

Mr. Chairman: Is there any further discussion on the amendment? All those in favour of the amendment, please so indicate.

Motion agreed to.

Mr. Chairman: Mr. Jackson, you have a further amendment to subsection 5(1)?

Mr. Jackson moves that the word "amount" in subsection 5(1) be struck out and the following substituted therefor: "the best available price plus a dispensing fee."

Miss Stephenson: We do not need that because it is redundant. It is now spelled out in section 5a.

Mr. Chairman: My suggestion is that it is not necessary. You already have the intent in the more specific wording in section 5a.

Hon. Mr. Elston: And in section 11.

Mr. Chairman: And in section 11, which refers back to section 5a.

All those in favour of subsection 5(1), as amended, please indicate.

Subsection 5(1), as amended, agreed to.

Mr. Chairman: Subsection 5(2) reads: "The minister may pay an operator of a pharmacy an amount different from the amount provided for by the

regulations in respect of a claim under subsection (1) if the minister has a written agreement to that effect with the operator."

Mr. Reycraft moves that subsection 5(2) of the bill be amended by striking out "by the regulations" in the second and third lines and inserting in lieu thereof "under section 5a."

Again, this would make it conform to our best available price. Agreed?

Motion agreed to.

Mr. Chairman: Subsection 5(3) reads: "A physician who submits to the minister a claim for payment in respect of supplying a listed drug for an eligible person is entitled to be paid by the minister the amount provided for by the regulations."

We would normally change "drug" to "drug product," as we have agreed.

Clerk of the Committee: We did not carry subsection 5(2), as amended.

Mr. Chairman: Sorry. We passed the amendment on subsection 5(2), but the clerk is right: We did not pass subsection 5(2) itself, as amended. All those in favour of subsection 5(2), as amended?

Subsection 5(2), as amended, agreed to.

Mr. Chairman: On subsection 5(3), I gather there is a government amendment other than that?

Interjection: No. Just "drug product."

Mr. Chairman: All right. It is understood that we are inserting "drug product"; otherwise, there is no amendment. All those in favour of subsection 5(3), please so indicate.

Subsection 5(3) agreed to.

Mr. Chairman: Subsection 5(4) reads, "The person submitting a claim under subsection (1) or (3) shall include in it the information prescribed by the regulations."

Does the opposition amendment that was proposed before still apply? I cannot tell.

Interjection: No.

Mr. Chairman: We just passed subsection 5(3), so we cannot really renumber it "3" at this stage. It no longer applies, because it was before we ever did a section 5a.

Miss Stephenson: Right.

Interjections.

Mr. Chairman: Is there any further discussion on subsection 5(4)?

Mr. Jackson: I have a question about that for the minister. I am a little nervous about this. Can he please explain to us whether he will have

the power under the regulations to instruct pharmacists that all the information he sets out in the regulations should be sent to his ministry or to whoever may request it on the basis of its being pertinent to a claim?

What is currently being requested? Has there been any dialogue about additional information being requested? I am concerned about confidentiality. Maybe it is not appropriate and maybe it is. I just wonder what types of information you get now on an Ontario drug benefit plan claim.

Hon. Mr. Elston: Can I have Al Burrows answer that?

Mr. Burrows: On a pharmacy claim, what is required on the regular claims form, which accounts for 95 per cent of the claims that go directly into the system, or if it comes in on tape, is that one identify the pharmacy, the date of service, the eligible person, the drug, the quantity of the drug provided, the prescription number so that we have an audit trail back to the source document and the amount claimed, which under the present agreement is the usual and customary amount. That is the extent of the information required under a normal claim.

On a special claim, which is one that requires some sort of manual intervention, there is an additional space for whatever the pharmacist feels he has to communicate. In the case of a resubmission, there may be a correction of one of the original pieces of claim material that the pharmacist has been able to correct. As I say, there is a space that is absolutely open to whatever the pharmacist wishes to provide in order to assist the clerk in assessing that claim properly. It would be our intent in the regulations to require that same information.

5 p.m.

We have had some discussion with the profession in a very peripheral way about the possibility of looking at other things, but at this time there is no agreement on requiring additional information.

Mr. Jackson: I have a question of the minister. I am concerned that currently, in the fields of information that are required in a filing to your ministry, you do not require the name of a physician. Do you plan to deal with that in this legislation or regulation, or is it an item you would deal with with the Ontario Medical Association?

The reason I raise this is that in your absence we have received several deputations, both on this bill and on Bill 94, with respect to drug utilization regulation, and it would be nearly impossible for your ministry to perform that kind of regulation in the absence of a listing of which doctors are prescribing what and how frequently.

Are you allowed within the context of this bill to set out the regulations and the pharmacists have to participate willingly in implementing that program? Or is it a matter that, for purposes of the record before the committee, you are willing to advise will be done directly with the OMA?

Hon. Mr. Elston: In fairness, it probably could happen under the authority of this, but it is not going to happen until we go through a fairly rigorous routine of finding out from the Ontario Pharmacists' Association and the OMA how we can make that item work.

Right now what we are looking at, in terms of the requirements by

regulations for reporting, are the things that are now are required, and no more, until we are able to move further with some idea of how we could work out protocols to get that extra information.

However, in fairness to you, if your question is, would this allow me to do it, the answer is yes, it would.

Mr. Chairman: All those in favour of subsection 5(4), please so indicate. Those opposed?

Subsection 5(4) agreed to.

Mr. Chairman: That completes section 5.

Interjections.

Mr. Chairman: I have it there and I did not even notice it. Mr. Ward, do you have something to say to me?

Mr. Ward: Yes, I do.

Mr. Chairman: Mr. Ward moves that section 5 of the bill be amended by adding thereto the following subsection:

"(5) Eligible persons shall be deemed to have authorized persons submitting claims under subsection (1) or (3) to include in the claims the information mentioned in subsection (4)."

Mr. Leluk: That is not what is here.

Mr. Ward: Was that not in the original? It is page 8.

Interjections.

Mr. Chairman: This is a new subsection 5(5), and it refers to subsections 5(2) or 5(3)?

Hon. Mr. Elston: It deals with the information under subsection 5(4), which is an exclusion of liability for the pharmacist reporting as required under subsection 5(4).

Miss Stephenson: Then it is liability before the colleges.

Hon. Mr. Elston: That is right.

Mr. Ward: When I was reading off this sheet, I said subsection (1). I think the original sheet is correct. It is subsection (2). One of them will be right.

Miss Stephenson: It is subsections 5(2) or (3).

Ms. Baldwin: No, it should be subsection (1).

Mr. Ward: I am sorry. It should be subsection (1). The one I read was right.

Miss Stephenson: Is it "(1), (2) or (3)"?

Mr. Chairman: No; it is just (1) or (3). It now reads: "Eligible persons shall be deemed to have authorized persons submitting claims under subsection (1) or (3) to include in the claims the information mentioned in subsection (4)." We have agreed that subsection (4) does that already.

Miss Stephenson: Does that language cover the concern the Ontario Pharmacists' Association had regarding the institution of proceedings or actions against those persons providing the information?

Hon. Mr. Elston: Yes.

Miss Stephenson: It does cover that--

Ms. Baldwin: It adequately covers that.

Mr. Chairman: Is there further discussion on this subsection? If not, all those in favour of the amendment by Mr. Ward, please indicate.

Miss Stephenson: I am reassured that no action can be instituted with that in the act.

Mr. Chairman: The motion is secured. We have a new section 5.

Does section 5, as amended, carry? All those in favour, please indicate. Those opposed?

Section 5, as amended, agreed to.

Mr. Chairman: We can now move back to section 11.

Miss Stephenson: No, we should do 5a.

Clerk of the Committee: That is carried.

Miss Stephenson: No. We did 5(1) to 5(5). What is this one?

Mr. Leluk: There is a new amendment to section 5a.

Mr. Chairman: We have a choice here.

Miss Stephenson: Is this page 2 of Mr. Ward's latest submission of 2 o'clock this afternoon? Is that what you said?

Interjection: That is correct.

Mr. Chairman: Is it the unanimous decision of this committee to reopen 5a? I see no opposition. Is there an amendment?

Mr. Ward: We have already had the vote.

Miss Stephenson: No, we did not have a vote on this section.

Mr. Chairman: Is there unanimous consent to reopen? I am not hearing any opposition. All right, we will reopen.

Miss Stephenson: Could we have two minutes, please?

Mr. Chairman: To read it? Absolutely.

This is far from deciding whether we shall reopen. We are giving people a chance to peruse the amendment before they decide whether they wish to reopen to deal with this.

Mr. Keycraft: While we have a break in the action, is it permitted to have a brief explanation of why we need to reopen 5a?

Mr. Chairman: What a clever idea, Mr. Keycraft. Why do you not try to explain it to us?

Mr. Keycraft: I was seeking an explanation.

Miss Stephenson: Be my guest.

Mr. Chairman: Perhaps, as he did on another section that was reopened, Mr. Bernstein will explain why these new sections, or whatever they are, should be added to section 5a.

Mr. Bernstein: Before I do that, what we are looking at is the material that was distributed in committee today. It is slightly different from the version that was handed out at 2 o'clock this afternoon, but purely to make it easier to read. The content is not different.

Interjection.

Mr. Chairman: Order. If we allow the explanation first, we can then have the debate, if members want to have a debate on it. First we are getting an explanation, and then we will have a decision whether we want to reopen.

Mr. Bernstein: The explanation is that the other day, subsection 5a(3) was passed by the committee but, inadvertently, it did not deal with situations with which it concerns itself in sufficient detail. The proposed subsection 3 says that, where the operator of a pharmacy was not able to purchase any of the listed drug products of a drug, not necessarily the product which was dispensed but any one of the drug products, in that case, the minister shall pay the cost of purchasing the least expensive listed drug product of that drug that is in the operator's inventory.

4:10 p.m.

The purpose of that is to be consistent with the whole theory of the drug benefit plan, in that if an operator of a pharmacy decides, for whatever reason, to dispense the most expensive product, which of course will be more expensive than the amount listed in the regulations, the minister should not be required to reimburse the operator that amount. The reference to the operator's inventory is to make it fair to him so he is not reimbursed at the lowest possible price but only at the lowest price of those products in his inventory.

The new proposed subsection 4 deals with the situation where the prescriber has prescribed no substitution, in which case the minister is obliged to reimburse the pharmacy for the cost of the product actually dispensed, regardless of whether that product happens to be the least expensive in his inventory. In those circumstances, the operator of the pharmacy is restricted in the product he can dispense.

The proposed new subsection 5--I will explain it. I see representatives of the Ontario Pharmacists' Association are shocked and appalled--provides what we have allowed for in other circumstances, referring to cost. For the purpose of both subsection 3 and subsection 4, when we talk about the cost to the operator of the pharmacy of purchasing a listed drug product, we mean the cost calculated in the manner provided for in the regulations.

Mr. Chairman: The committee's decision is whether we wish to give you an unanimous consent to reopen 5a to deal with this one amended subsection and two new subsections. Is there consent? No?

Mr. Leluk: No.

Mr. D. S. Cooke: Before Mr. Leluk says that, he had better re-read 5(4). Unless I am wrong, I think we need 5(4).

Miss Stephenson: Yes. The question is, do we need 5(3)?

Mr. Chairman: That will not be your decision to vote against a section. I want to know whether you wish to reopen it now, or have it discussed in the committee of the whole House where it can come forward again. That is all. Do you want to discuss it today or later? We will take a small break here and decide.

Mr. D. S. Cooke: Let us run through them quickly.

Mr. Chairman: Is there unanimous consent to deal with this now, or do you wish this to be done in committee of the whole House? Mr. Leluk, do we have consent from your party? Mr. Cooke? Mr. Leluk, it is not a matter of whether you wish to oppose or support, but do you want to reopen at this point to even deal with it?

Miss Stephenson: I am willing to reopen at this point rather than having it go to committee of the whole House.

Mr. Chairman: All right, then. Let us deal with it.

Mr. Ward moves that subsection 5a(3) of the bill be struck out and the following substituted therefor:

"(3) Despite subsection 1 where the minister is satisfied that the operator of a pharmacy was not reasonably able to purchase any listed drug product of a drug at a price less than or equal to the amount provided for by the regulations for the purpose of subsection 1, the amount that the minister shall pay under subsection 5(1) is the sum of the dispensing fee referred to in subsection 2 and the cost to the operator of purchasing the least expensive listed drug product of the drug that is in the operator's inventory.

"(4) Despite subsection 1, where a prescription includes a direction that there be no substitutions, and the minister is satisfied that the operator of the pharmacy was not reasonably able to purchase the listed drug product prescribed at a price less than or equal to the amount provided for by the regulations for the purpose of subsection 1, the amount that the minister shall pay under subsection 5(1) is the sum of the dispensing fee referred to in subsection 2 and the cost to the operator of purchasing that listed drug product.

"(5) For the purposes of subsections 3 and 4, the cost to the operator

of a pharmacy of purchasing a listed drug product shall be calculated in the manner provided for by the regulations."

Mr. Chairman: Thank you, Mr. Ward. I presume we shall have Mr. Bernstein's explanation to deal with your response. Why do we not, for the purposes of voting on this, split this up and take each one individually, if that is all right. It might be the most organized way to do it.

Is there any discussion on the proposed subsection 5a(3) amendment?

Mr. Reycraft: I am not sure if we are clear why this amendment is needed. Could the deputy minister or the minister give us an explanation?

Dr. Dyer: The purpose is if the pharmacy is unable to purchase any of the interchangeable list of drugs at the price we have listed in the formulary, this enables us to reimburse that pharmacist at that pharmacist's acquisition cost. Presumably that acquisition cost is above the cost at which we would normally reimburse him. This enables us to do that.

There are two circumstances we might envisage. One would be in a remote pharmacy where he is unable to buy any of the drugs at the price listed. Or, the second part is the "no substitution" where he would required to provide a particular brand and may not be able to provide that brand at the price shown in the forumulary. This allows us to pay that pharmacist at the cost of that particular brand that he has dispensed.

Mr. Chairman: Thank you doctor. Further discussion?

All those in favour of the amendment?

All those opposed?

Motion agreed to.

Subsection 5a(3) as amended, agreed to.

On subsection 5a(4):

Mr. D. S. Cooke: If I understand this correctly, what you are saying in this section is if a doctor writes "no substitution" then you are authorizing ODB to pay. Why would you not put this section and say what ODB would pay would be best available price plus a dispensing fee and we could refer to Bill 55? I understand in Bill 54 it is a single listing. In the case of "no substitutions," Bill 55 will have a listing for all drugs. Why could we not refer to Bill 55 for the purposes of this section so we can get best available price for no substitutions?

Dr. Dyer: Bill 54 only lists the lowest best available price, as you know.

Mr. D. S. Cooke: Bill 55 lists the others.

Dr. Dyer: That is right. This section provides that it may be possible for that pharmacist to buy the original or "no substitute" prescription at the price that is in the formulary. Where that is the case, the amount prescribed in the formulary would apply. This provides for cases where the amount that he paid for that particular drug is in excess or not equal to the amount in the formulary. We would then be authorized to pay an

amount above the amount in the formulary. The formulary is the only amount they pay. It relates that to his cost.

Mr. D. S. Cooke: I do not disagree with you that it relates to his cost but it deviates and in several instances in the bill we have already deviated from the principle of best available price. This would be yet another one. The only way I would support this section would be if we refer to the appropriate section in Bill 55, which we can do. I think in another section of this bill we refer to that bill.

I apologize for not having an amendment but I only saw this at five to two.

5:20 p.m.

Mr. Chairman: One of the reasons for dealing with this in committee of the whole House rather than today would be that both bills would be passed at that time.

Miss Stephenson: Exactly.

Mr. Chairman: One of the reasons it would be easier to deal with this in committee of the whole House, if you chose to go the route Mr. Cooke is suggesting, is that both bills would have been virtually completed. It would be easier to refer to subsections of Bill 55 at that point.

Ms. Baldwin: If the committee decides at some point it wants to make such a reference, as I believe it has already done, I am quite prepared to make sure it is the proper reference or bring it back to the committee's attention if the corresponding section in Bill 55 is not passed by the committee.

Mr. Chairman: All right. Whichever way you want to operate on that--

Miss Stephenson: It is that information that needs to be referred to.

Mr. Chairman: Would that provide difficulties for the ministry? It would need an amendment otherwise. Again, that is the difficult thing about dealing with this at this stage.

Mr. D. S. Cooke: What legislative counsel is suggesting is that we pass the intent and the amendment would be drafted.

Ms. Baldwin: That is what I would suggest.

Mr. D. S. Cooke: I would be prepared to do that.

Mr. Chairman: I would need a motion.

Miss Stephenson: How do we say it?

Mr. D. S. Cooke: We would be saying that where there is a prescription that says "no substitutions," the price that would be paid by the Ontario drug benefit program would be the best available price for the drug that the prescription states plus the dispensing fee. "Best available price" would be spelled out in Bill 55, because there is only one listing under Bill 54.

Mr. Chairman: I understand the intent. If it finds its way into written form, as it may in a minute or two, I would take that as an amendment.

Ms. Baldwin: I have it only in the form of an intent so far, but I will work on it now.

Miss Stephenson: What you are saying is that the sum of the dispensing fee referred to in subsection 2, and the best available price for that drug, is--

Mr. D. S. Cooke: Spelled out in section whatever.

Ms. Baldwin: For that specific product.

Miss Stephenson: Yes.

Mr. Bernstein: It is an allowable charge under the Prescription Drug Cost Regulation Act for the dispensing of that product. That is really what you are saying.

Miss Stephenson: That is not what we are saying.

Mr. D. S. Cooke: It is not maximum. It should be very clear what it is.

Miss Stephenson: We are saying the best available price.

Mr. Chairman: I am wondering whether it might be wise to suggest that this is stood down until you can sort it out, unless you can work out something on it very quickly. It is a little messy for us to talk about an intent of something and yet pass a clause which has some sort of wording.

Hon. Mr. Elston: We really have to go back to this bill after we do Bill 55.

Mr. Chairman: No. I am saying that I hope in the next little while, if there is some agreement on this, you can work out a wording on this with counsel and come back to this.

We still have parts of sections 11, 12 and 13 to do. If, in the next while, people can come up with the kind of wording that would meet general consensus, that would be the easiest way of dealing with it, if it is a friendly suggestion to the government. We cannot deal with subsection 5 unless we have dealt with 3 and 4.

Miss Stephenson: If the intent of 4 is carried through, do we need 5?

Mr. Bernstein: We still need 5 for the purposes of subsection 3.

Mr. D. S. Cooke: Let us pass 5, but amend it by striking "and 4" in the first line.

Mr. Chairman: Is that amended by striking out 4 or do you have to put in a 4?

Mr. D. S. Cooke: Subsection 5 should say "for the purposes of subsection 3, the cost..."

Miss Stephenson: Okay.

Mr. Chairman: Is that a friendly amendment to Mr. Ward?

Hon. Mr. Elston: You are talking about 5 now, are you?

Mr. Chairman: We are talking about subsection 5. The suggestion by Mr. Cooke at the moment, as a friendly amendment rather than as an amendment, is that we would strike the words "and 4."

Hon. Mr. Elston: And then renumber this as 4?

Mr. Chairman: No, it would still be numbered 5, because there is a presumption we are going to end up with some kind of a 4 in there. The suggestion is that it is redundant for 4, but there would still need to be a reference for 3.

Hon. Mr. Elston: Then we might as well deal with 4, if we are going to talk about that. We should discuss that now.

Mr. Chairman: I can only do that if you do not want to have an amendment. Either we stand it down or we do not stand it down. This is the difficulty of trying to deal with things like this.

Mr. Ward: Is the suggestion to stand down 4 until Bill 55 is dealt with?

Mr. Chairman: That was not the intent. It was just for a few minutes until someone could come up with an amendment we could put on the floor to have a discussion in terms of putting forward Mr. Cooke's view. I am debating whether that becomes the committee's view or whether we stick with subsection 5a(4) as we have it here.

I think we are almost there. I am not sure. Legal counsel is now going over it with Mr. Cooke. If we have it, then we can go back to subsection 5a(4) and see what we have. Mr. Cooke, do you have an amendment to propose?

Mr. D. S. Cooke: I have an amendment to subsection 5a(4). I am not going to give you the proper wording for the beginning, but in the second last line, after the word "the," we would scratch the rest of that and add, "price designated under subsection 5(1) of the Prescription Drug Cost Regulation Act as the best available price for that product."

Mr. Chairman: Mr. D. S. Cooke has moved that in the second last line, the words "cost to the operator of purchasing that listed drug product" be removed. The following words to be inserted, "the price designated under subsection 5(1) of the Prescription Drug Cost Regulation Act as the best available price for that product."

Mr. Ward: The intent is to compensate on the basis of whatever the price under Bill 55 on a multiple-listing basis.

Mr. D. S. Cooke: I understand the purpose of the amendment you brought in is to provide for some pricing mechanism for when there are no substitutes. If there is a brand or whatever the alternative is, you want to put in acquisition cost, and we are saying the principles of these bills are now best available price. We are just following the principles of the bill.

Mr. Ward: By making reference to the pricing under Bill 55, which I understand is to list each different product and give a price to it, would there not be an incentive, on the basis of this amendment, for all pharmacies to dispense only the higher-priced product?

Mr. D. S. Cooke: No. It says no substitutions. That is the only circumstance.

Miss Stephenson: This is the no substitution section only.

Mr. Chairman: You will recall that the no substitution element is currently under the control of the doctor rather than the pharmacist. Is there further discussion on the amendment by Mr. Cooke? All those in favour of the amendment, please indicate.

Motion agreed to.

Mr. Chairman: Is there any further discussion on subsection 5a(4), as amended? All those in favour of subsection 4 as amended, please indicate.

Motion agreed to.

Mr. Chairman: Is there any further discussion on subsection 5?

Mr. D. S. Cooke: The only thing that has not been done there is to remove "and 4" in the first line.

5:30 p.m.

Mr. Chairman: Are we now in agreement with that because of the change of the committee?

Mr. Ward moves that subsection 5a(5) be amended to read:

"(5) For the purposes of subsection 3, the cost to the operator of a pharmacy of purchasing a listed drug product shall be calculated in the manner provided for by the regulations."

Is there further discussion?

Motion agreed to.

Mr. Chairman: Shall section 5a, as re-amended, carry?

Motion agreed to.

Mr. Chairman: Mr. Reville, will you take the chair for me?

We are now moving back to section 11 and will be going to page 23. Can we do clauses 11(1)(e) and (f) at this stage? I think so. We will be going to page 23 of Mr. Nigro's document. We stood down clauses 11(1)(e) and (f). These refer to specific sections in section 5, which we have now passed. I am not sure whether subsection 5(4) is still the right reference in clause 11(1)(e). It is a correct reference? It seems to be.

Is there any debate on clause 11(1)(e), which has to do with the regulations prescribed by the Lieutenant Governor in Council? This refers back

to what we passed in subsection 5a(4) as being the power of the Lieutenant Governor in Council.

Miss Stephenson: We are just dealing with clause 11(1)(e) at the moment, and subsection 5a(4) is the appropriate section.

The Vice-Chairman (Mr. Reville): Yes, and unamended. It really should not be a problem for anybody. All those in favour of clause 11(1)(e) please indicate.

Motion agreed to.

The Vice-Chairman: Let us move now to clause 11(1)(f).

Miss Stephenson: Is section 5 the appropriate reference in clause 11(1)(f)?

The Vice-Chairman: Clause 11(1)(f) only mentions section 5.

Miss Stephenson: That is the correct reference.

The Vice-Chairman: Is there any discussion?

All those in favour of clause 11(1)(f) please indicate.

Motion agreed to.

The Vice-Chairman: You will find subsection 11(2) on page 25. It begins: "A regulation made under clause (1)(f) may." There were some government amendments. Are there any additional amendments anywhere?

Hon. Mr. Elston: This is not necessary, as I understand it.

Miss Stephenson: We do not need this now, do we?

The Vice-Chairman: The staff is unclear on whether we need this.

Mr. Bernstein: I think Mr. Cooke wants to say something. He may not know it yet, but I think he wants to make it say "for physicians only."

Clerk of the Committee: There is an amendment on this.

Mr. Bernstein: Subsection 11(2).

The Vice-Chairman: This may be an answer to Dr. Stephenson's question.

Mr. D. S. Cooke: I am not sure. I have an amendment to subsection 11(2), but not to 11(2a).

The Vice-Chairman: All right. Let us figure out where we are. Is there any discussion on subsection 11(2a)?

Ms. Baldwin: May I make a suggestion? Mr. Cooke's amendment deals with what is called the "flush" of subsection 11(2a). It is hard to look at it without knowing what it is going to apply to. Perhaps you should hear his motion first.

The Vice-Chairman: The suggestion from legislative counsel is that, in view of the fact that Mr. Cooke's amendment speaks to the flush--whatever that may be--of subsection 11(2a), we should hear what it is.

Mr. D. S. Cooke: Let me move it, and if it is a different section, we can deal with that.

The Vice-Chairman: Mr. Cooke moves that subsection 11(2) of the bill be amended by inserting after "clause (1)(f)" in the first line "in respect of physicians."

Mr. D. S. Cooke: As I recollect, this is just so that physicians have regulatory-making power for fees.

Ms. Baldwin: Do you want me to speak to it?

Mr. D. S. Cooke: Yes, please.

Ms. Baldwin: If I can be of some assistance, I think what the committee has done so far is to set up a new regime other than that in subsection 11(2) in respect of operators of pharmacies. This bill, however, applies as well to physicians dispensing drugs.

The question is, now are fees determined for physicians? I believe that Mr. Cooke's motion is trying to say that subsection 11(2) should not apply in respect of operators of pharmacies, but leaving it open to apply in respect of physicians.

Miss Stephenson: You specify a regulation for dispensing physicians made under clause (1)(f). Does that not sufficiently exclude the operators of pharmacies? For example, if you say that the Lieutenant Governor may make a regulation under clause (1)(f) in regard to dispensing physicians, then--

Ms. Baldwin: I understand your question, Dr. Stephenson.

It would not be necessary to have subsection 11(2) at all even in respect of physicians if it did not seem desirable as a policy matter to provide for specific flexibility in the making of those regulations. Now that we know it is no longer reasonable for operators of pharmacies, do you want to consider, regarding physicians, whether it should be stated that regulations can be provided for a specified amount, etc., as set out in subsections 11(2a) and 11(2b)?

In the regulations, you can still set amounts with regard to physicians even without subsection 11(2). The question is merely whether you want to make sure there is that extra flexibility in the regulation power for physicians.

The Vice-Chairman: This amendment was moved some time ago, I understand.

Miss Stephenson: Yes, it was.

5:40 p.m.

The Vice-Chairman: At least, it was filed. People knew about it, whatever it might have meant. It still means that now.

Does anyone wish to make any comments on Mr. Cooke's amendment?

Hon. Mr. Elston: We have the regulation-making authority now and this really becomes a redundant section from that standpoint. If people intend to pass it, it will not affect the way the bill is working.

Mr. D. S. Cooke: If we do not need it then I will withdraw it.

The Vice-Chairman: Mr. Cooke now withdraws his amendment which means we are now back to clauses 11(2)(a) and (b).

Could we have the vote on clauses 11(2)(a) and (b)?

All those in favour? All those opposed?

Motion negatived.

The Vice-Chairman: It will be struck out from the record and from the book.

Now we go to subsection 11(3) which you will find on page 27, starting "(3) A regulation made...." A government amendment printed on page 27. Have any other amendments come in?

Hon. Mr. Elston: In the light of our amendments that have gone through, again this section becomes redundant and there should be a vote against it, although I do not propose to instruct everyone on how to vote on this section.

Miss Stephenson: Are you positive you do not need that? I just want to know, that is all.

The Vice-Chairman: Any staff comments?

Mr. Bernstein: There are two things. First, this was originally put in with an abundance of caution because the authority to provide for or to make differentiations may already be in the bill. Apart from that, one of its main purposes was to provide for differing compensation or reimbursement for pharmacies for any one of many possible reasons.

Miss Stephenson: Yes, because now the necessary flexibility comes under the negotiation section, which is fine.

The Vice-Chairman: We now take the vote on subsection 11(3). All those in favour? Those opposed?

Motion negatived.

Subsection 11(4) agreed to.

On subsection 11(5).

Miss Stephenson: When did we start having retroactive regulations?

Mr. D. S. Cooke: What would happen about the formulary we are waiting for now?

Miss Stephenson: Oh, dear. One hopes that would appear rapidly.

Mr. D. S. Cooke: Something has to appear retroactively.

Miss Stephenson: Does this really mean you are going to pay retroactively the increases included in the formulary?

Dr. Dyer: We often do when we renegotiate a new fee scale.

Miss Stephenson: If this means you really are going to pay retroactively, I will be glad to support it.

The Vice-Chairman: Good. Sounds as though you may want to support it.

All those in favour of subsection 11(5)?

All those opposed?

Subsection 11(5) agreed to.

Clerk of the Committee: You have to pass section 11, as amended.

The Vice-Chairman: All those in favour of section 11, as amended?

All those opposed?

Section 11, as amended, agreed to.

The Vice-Chairman: Congratulations, committee. Section 11 is done.

Mr. Reycraft: I hate to interrupt you when you are moving so quickly, but I have a note in my collection here that we stood down clauses 11(1)(e) and (f). Did we deal with those?

Miss Stephenson: Yes, we did.

The Vice-Chairman: We did. You voted for them, too.

Mr. Reycraft: I am happy to hear that.

On section 12:

The Vice-Chairman: All those in favour of subsection 12(1)?

Interjections.

The Vice-Chairman: Let us try this again. We are on page 28 of Mr. Nigro's document. The vote is on subsection 12(1).

All those in favour?

All those opposed?

Subsection 12(1) negatived.

Miss Stephenson: I am trying to ask you a question.

The Vice-Chairman: Would you like to reopen the subsection, Dr. Stephenson?

Miss Stephenson: My question is, why on earth was that in there?

Hon. Mr. Elston: It was in there, as was explained on several occasions, because it was confusing--

Miss Stephenson: It sure was.

Hon. Mr. Elston: --to provide us with the opportunity to revoke section 7, which dealt with substances that were designated for distribution under the Ontario drug benefit plan in contemplation of expanding to another program for listed substances.

We found that the section caused too much confusion. When we are prepared to move in a different way with respect to listed substances, we will make a specific amendment to this bill rather than have this section in operation.

Miss Stephenson: Thank you. This is the first bill I have ever seen in which a section was related to repealing a section of the same act.

Hon. Mr. Elston: That is right. It is done, and we are removing it.

Miss Stephenson: All of it?

Hon. Mr. Elston: Yes, all of it.

Miss Stephenson: The whole of section 12 is to be--

The Vice-Chairman: Subsections 12(1), (2) and (3) go?

Hon. Mr. Elston: Yes.

Mr. Ward: We might as well call the vote on the whole section.

The Vice-Chairman: In that case, why do we not call for the vote on section 12 in its entirety? All those in favour?

Miss Stephenson: In favour of repealing it? Yes.

The committee divided on whether section 12 should stand as part of the bill, which was negatived.

The Vice-Chairman: Section 12 is struck out.

On section 13:

Mr. D. S. Cooke: May I ask a question on section 13?

The Vice-Chairman: Yes.

Mr. D. S. Cooke: What are the minister's thoughts at this point for when this bill is passed and reported back to the House? I remember a bill I dealt with back in 1978, called the Mental Health Act, where only certain sections of the bill were proclaimed. Can the minister indicate to us whether he intends to have the entire Bill 54 proclaimed, or is he contemplating certain sections being proclaimed and not the whole thing?

Hon. Mr. Elston: It can work only as a package. I do not think we

could proclaim sections 1, 2 and 3 and not others. The entire bill really works. As you have seen as we have gone through clause by clause, the clauses are tied together very closely, and it would be nearly impossible to proclaim one section and not others.

Mr. D. S. Cooke: Maybe legislative counsel can help. I just want to be sure of this. My concern is that since there was a court case that gave you the authority to print a formulary--

Hon. Mr. Elston: Pardon? I am sorry.

Mr. D. S. Cooke: You have been given the authority, or it has been cleared up that you have the right to print a formulary, regardless of Bill 54.

Hon. Mr. Elston: Yes.

Mr. D. S. Cooke: Not analysing the bill to see what could or could not be proclaimed, if certain sections were not proclaimed, you could still print your own formulary. However, other sections might be advantageous to proclaim. I just want something on the record that indicates your intentions.

Hon. Mr. Elston: But this section indicates that the Lieutenant Governor will proclaim the whole act at one time. There are no sections in here that say such and such a section will come into force only on proclamation by the Lieutenant Governor.

5:50 p.m.

Ms. Baldwin: Excuse me. There is authority; it might be in the Legislative Assembly Act. But even when it is put in this form, it is possible to proclaim only a section or a couple of sections.

Hon. Mr. Elston: I do not know which sections. Which sections do you think we might withhold proclaiming?

Mr. D. S. Cooke: Perhaps the sections on best available price.

Hon. Mr. Elston: In that case you would not need to proclaim the whole bill.

Miss Stephenson: Then there would be no means of paying the pharmacists.

Mr. D. S. Cooke: Sure there would be. You would still print your own formulary; you just would not proclaim those sections.

Anyway, you are saying that if the bill is proclaimed, you intend to proclaim the entire bill.

Hon. Mr. Elston: Yes.

Miss Stephenson: May I ask one question? Was it because of the lack of security about your authority to print a formulary that there was no mention of a formulary in this bill?

Hon. Mr. Elston: The formulary is in regulations. We make regulations in compliance with the mechanism set out in this bill. "Formulary" is just a name that encompasses those sets of regulations that set out the prices.

Miss Stephenson: Okay, except that those regulations have now come to be commonly known as the formulary. Therefore, I wonder why we go to such pains to avoid the use of the word "formulary" in this bill?

Mr. D. S. Cooke: It is in the regulations.

Mr. Bernstein: It is unnecessary.

Hon. Mr. Elston: It is redundant. We have to have the regulations. We have to put those together on a basis that is set out in this act, and that is the provision. We could call it anything we wished, really.

Miss Stephenson: Oh. What would you like to call it?

Hon. Mr. Elston: I think "formulary" would be a good word for it.

Miss Stephenson: Excellent. I guess my concern is that the listing of a drug is much more sensible when it is related to a formulary.

The Vice-Chairman: Are there any amendments to section 13?

Miss Stephenson: The short name?

The Vice-Chairman: No. We are still on section 13, the commencement section.

Miss Stephenson: The date of proclamation. In actual fact, it will become section 12.

The Vice-Chairman: It will be renumbered, actually, to section 12.

All in favour?

Opposed?

Section 13 agreed to.

The Vice-Chairman: We move now to section 14, which is the short title.

Miss Stephenson: This is lovely. This bill is going to have 13 sections.

The Vice-Chairman: It is a superstitious bill.

Hon. Mr. Elston: No. It has more than that.

Miss Stephenson: That is right. It has sections 5a and 5b, which we have to renumber.

Section 14 agreed to.

The Vice-Chairman: Hold on. Do not get too enthusiastic. We have to go back to section 1, because somebody from the Progressive Conservative Party wanted to do that. I do not know what you want to do.

Interjections.

The Vice-Chairman: May I direct your attention, members of the

committee, to page 3 of the Nigro document, which suggested that we are holding down the definition of "any purchaser"? I do not know where that is, anyway. There is also something called "best available price" and something called "price" on that page.

Since those were held down at the suggestion of the Progressive Conservatives, we should hear from you on your current view.

Miss Stephenson: Our concern about the item related to "any purchaser" has been met in another section of the act. "Best available price" is now defined within the act instead of within the definitions, as we had suggested.

It still might be useful to suggest that when a drug is to be listed, the requirements for the manufacturer include the provision of the information regarding the selling price of the drug. That definition of "price" might be very useful to the ministry, since it includes "the value of any price reduction granted by the manufacturer or his representative in the form of rebates, discounts, refunds, free goods or any other benefits of a like nature."

The Vice-Chairman: I think some officials are preparing to respond to Dr. Stephenson's comments, unless you want to add some more grist to their mill. They are not paying any attention at the moment.

Mr. Reycraft: It is my understanding that we had approved a section allowing the ministry to identify the price by regulation. Am I mistaken?

Miss Stephenson: No. We have not stated that the ministry would require that kind of information.

The Vice-Chairman: Minister, do you want to say something?

Hon. Mr. Elston: I am just going to speak with my parliamentary assistant.

The Vice-Chairman: Why does everyone not have a glass of water?

Mr. D. S. Cooke: How about a cigarette?

Miss Stephenson: No.

The Vice-Chairman: Mr. Cooke, if you had not asked, you could have had one.

Mr. D. S. Cooke: I knew Dr. Stephenson was here.

The Vice-Chairman: Why do you not take a little walk?

We are doing very well. Let us not break down at this important moment in our history.

Mr. Ward: Do we have a motion just on the definitions?

The Vice-Chairman: No. I believe the Progressive Conservatives are now content with "any purchaser" and "best available price." Is that correct?

Mr. Bernstein: Right.

The Vice-Chairman: We are now dealing with "price."

Miss Stephenson: The word "price" is one we felt required closer definition, and should be included in the definitions section, which is why I had asked for unanimous approval for reopening the definitions section.

I doubt at this point whether we need the phrase "registered in writing on an invoice," although that does provide the amount of money. There were concerns that the quoted price might not include all the small items that can add up to a great deal, as you found out, in relation to the total price of the drug. We felt it might be reasonable to include that in the definition of "price" for best available price.

The Vice-Chairman: We do have an amendment of yours printed in respect of this. Would you like to hear it read?

Miss Stephenson: I would be delighted, because I do not have it.

The Vice-Chairman: This was moved by you on March 25.

"'Price' means the selling price of a drug, registered in writing on an invoice, less the value of any price reduction granted by the manufacturer or his representative in the form of rebates, discounts, refunds, free goods or any other benefits of a like nature."

Do you like that? All right. We will have a small hiatus.

Miss Stephenson: Legislative counsel has just given me a definition.

Ms. Baldwin: I am representing the committee as I am supposed to.

Miss Stephenson: Yes.

"'Price' means the selling price of the drug shown on an invoice less the value of any price reduction granted by the manufacturer or representative of the manufacturer."

Ms. Baldwin: I have done that primarily because we are directed not to used the word "his" in order to be nonsexist. We dropped it accordingly.

The Vice-Chairman: Is all we are dealing with the "his"?

Miss Stephenson: Yes, it should be. In order to avoid "his":

"'Price' means the selling price of a drug, registered in writing on an invoice, less the value of any price reduction granted by each manufacturer or representatives thereof in the form of rebates, discounts, refunds, free goods or other benefits of a like nature."

The Vice-Chairman: Are you content with that?

Miss Stephenson: Yes.

The Vice-Chairman: Could you pass that over so we can get it written down?

Miss Stephenson: I am going to have to rewrite it: "The selling price of a drug, registered, shown on an invoice"--

Mr. D. S. Cooke: Mr. Bernstein had a comment.

The Vice-Chairman: Mr. Bernstein does not seem to be paying any attention, Mr. Cooke.

Miss Stephenson: No, he is not.

The Vice-Chairman: Mr. Bernstein, did you want to say something at this time?

6 p.m.

Mr. Bernstein: I am most attentive, to the extent of my ability. The principle behind the proposal is a good one, but I suggest it cannot be done in the form of a definition of the word "price." As far as I know, the word "price" appears only in the phrase "best available price," which is defined under subsection 11(2c). To define the word "price" is to cut across that. I am still attentive, Mr. Chairman.

The Vice-Chairman: Refuelling in mid-air.

Mr. Bernstein: The word "price" also appears in clause 10a(1)(a), but I think the primary purpose of this motion is to ensure that the best available price is the best available real price, not an artificial price inflated because of various benefits.

Miss Stephenson: That is correct.

Mr. Bernstein: While clause 10a(1)(a) addresses that in so far as same volume, same price is concerned, it does not really get at the heart of the matter. What we are talking about is the phrase "best available price." If the committee was prepared to reopen subsection 11(2c) to insert this concept, we could get the idea of realistic price incorporated into the definition of "best available price."

Miss Stephenson: There is another alternative. In the definitions, we could insert a definition of "best available price" which would simply mirror the one in section 11 and then we could add this section to it.

Mr. D. S. Cooke: There is a simple solution.

The Vice-Chairman: Could we hear it?

Mr. D. S. Cooke: We could do as Mr. Bernstein said and turn to 11(2c) and inject the definition after "means the lowest price." We have to inject the words, "which includes any price reduction granted by the manufacturer or representative in the form of rebates," etc.

The Vice-Chairman: Mr. Cooke, could you please stop and go back, because we have just all found the page of this document. Not everyone has it. Why do you not all grab one of those? If you look at the last paragraph on page 10, under the heading "best available price," which is a definition, you will then be able to follow Mr. Cooke as he explains it all to us. Are we ready? Go.

Mr. D. S. Cooke: If this makes sense:

"In this section 'best available price' in respect of a listed drug

means the lowest price, which includes any price reduction granted by the manufacturer or representative in the form of rebates, discounts, refunds, free goods or any other benefits of a like nature which the manufacturer of that drug supplies to purchasers in Ontario in a particular dosage form and strength of the drug."

Does that make sense to the legislative counsel?

Ms. Baldwin: Not quite. Give me a minute.

Mr. D. S. Cooke: But this is the appropriate section to put it in.

Hon. Mr. Elston: Should it not cover wholesale as well?

Miss Stephenson: It is in there. If it is there, then it means that it has to apply to wholesale as well.

Ms. Baldwin: I can offer a possibility here.

Miss Stephenson: It does not sit.

Ms. Baldwin: It would read this way:

"(c) In this section, best available price for a drug in a particular dosage form and strength means the lowest amount calculated per gram, millilitre, capsule or other appropriate unit for which that drug in that dosage form and strength can be purchased in Canada for wholesale or retail in Ontario and in calculating that price, the value of any price reduction granted by the manufacturer or a representative of the manufacturer in the form of rebates, discounts, refunds, free goods or any other benefits shall be taken into account."

Miss Stephenson: "Of like nature shall be taken into account."

Ms. Baldwin: "Of like nature shall be taken into account."

Mr. D. S. Cooke: That is exactly what I meant to say.

Miss Stephenson: You are adding it at the end of subsection 2(c).

Ms. Baldwin: That is right.

The Vice-Chairman: We would have to reopen that section and amend it to include the new words. Then we would be able to go back to the definition, if that is what the committee wishes to do.

Hon. Mr. Elston: We do not have to go back to definitions if we include this as the section under subsection 2(c). That is why we went to the section specifically because this sets out exactly what it is.

I want to make one more point. When we are considering friendly amendments we should include wholesalers, who also provide some arrangements. The wording refers to manufacturers and their representatives and operators, not wholesalers.

The Vice-Chairman: We will try to get the words off the record and see if the committee wants to approve this amendment. Would you like me to read this to you now? It has been worked out. Under the heading best available price, subsection 2(c), It would now read:

"(c) In this section, best available price for a drug in a particular dosage form and strength means the lowest amount calculated per gram, millilitre, capsule or other appropriate unit for which that drug in that dosage form and strength can be purchased in Canada for wholesale or retail sale in Ontario and in calculating that amount the value of any price reduction granted by the manufacturer or wholesaler or their representatives in the form of rebates, discounts, refunds, free goods or any other benefits of a like nature shall be taken into account."

Is there further discussion?

Miss Stephenson: We were trying to say that they had to be subtracted from the amount. If you just take them into account, maybe you are only looking at them. Can you say "less the value of" or "the amount shall be reduced by the value of any price reductions"?

6:10 p.m.

The Vice-Chairman: It should be pretty clear that if you get some kind of bonus or discount, that would be taken away. It is a subtraction. It is an obvious thing, do you not think? You do not think it is going to be added on.

Miss Stephenson: That may be your intent but that is not precisely said.

The Vice-Chairman: I do not have any intentions in this regard. I am interested in what your intentions are.

Miss Stephenson: My intent is that it be reduced by that, but that is all right. One of the things that worries me is that unless the legislation says that, it does not necessarily have to happen.

Hon. Mr. Elston: Why not just put in, "shall be taken into account in reducing," because that is what you are after.

Miss Stephenson: Or simply "shall be deducted."

The Vice-Chairman: You just cannot throw these words out into the etner and expect them to land in an amendment.

Mr. Bernstein: Deduction is a word that goes with--

Miss Stephenson: That is a benefit of like nature.

The Vice-Chairman: Excuse me, I wonder if we could have a little order so that legislative counsel could try to put your wishes into words.

Excuse me, with due respect, Minister--

Hon. Mr. Elston: I was just talking with legislative counsel.

The Vice-Chairman: The legislative counsel is speaking to me. The legislative counsel works for this committee.

She was clearly talking to me.

Miss Stephenson: Why can we not simply say--

The Vice-Chairman: Dr. Stephenson please, let the legislative counsel take a crack at it. She will then give you her best effort and you can decide whether you like it or not.

I am not nearly as jolly as the previous chairman.

Miss Stephenson: I would agree with that wholeheartedly.

Ms. Baldwin: "And in calculating that amount the Lieutenant Governor in Council shall deduct the value of any price reduction granted by the manufacturer or wholesaler or their representatives in the form of rebates, discounts, refunds, free goods or any other benefits of a like nature."

The Vice-Chairman: Do you agree?

Miss Stephenson: Shall deduct, right. Very good. Congratulations.

The Vice-Chairman: Can we now take the motion to re-open clause 11(2)(c)?

I have unanimous consent. We are now reopened. Do we have to read this again.

Dr. Stephenson moves that clause 11(2)(c) be amended by adding after the words "in Ontario", "and in calculating that amount the Lieutenant Governor in Council shall deduct the value of any price reduction granted by the manufacturer or wholesaler or their representatives in the form of rebates, discounts, refunds, free goods or any other benefits of a like nature."

Motion agreed to.

Section 11, as amended, agreed to.

Miss Stephenson: May I ask a question?

The Vice-Chairman: Yes.

Miss Stephenson: Unhappily, I was not present the day this act was first considered clause-by-clause by the committee. I am wondering if someone could please provide me with the rationale for suggesting that there not be some specific strictures placed upon the definition of a listed drug or a listed drug product? The motion that I had made was that in your definition of a listed drug, all of the information regarding all of the ingredients be supplied to the minister. Not that they be listed in the formulary or regulations, but that information be available to the minister. I simply said that "a listed drug is one for which the manufacturer has provided to the minister a complete list of all ingredients including vehicles, excipients, inert substances, colouring, and flavouring materials" so that it would be in some place which would be accessible to both pharmacists and physicians in order to ensure that there is some reasonable site of that information available.

The Vice-Chairman: For the benefit of the members of the committee, Dr. Stephenson is now on page one of Mr. Nigro's document and legislative counsel has some remarks.

Ms. Baldwin: Without making any remarks with regard to the policy of what Dr. Stephenson is proposing, I agree that is a substantive matter and if

the committee wants to consider it, I do not think it would be appropriate for it to be in the definition section. It would be more appropriate for it to be a section or a subsection in its own right in the bill.

The Vice-Chairman: The other thing that we might want to point out to you is that that section was moved by Mr. Jackson and was defeated.

Miss Stephenson: As a definition, because it was an inappropriate place to have it?

Clerk of the Committee: I only have it as defeated.

The Vice-Chairman: If you have some views on this matter, I guess you will have to reopen the definition for that section.

Miss Stephenson: No, if legislative counsel is saying that it should not be in definitions then I will accept that. My concern is that for the purposes of this bill, and for the purposes of Bill 55, it seems to me that it is essential that the information which is becoming increasingly critical to increasingly allergic and sensitive patients be available somewhere. I simply would like to make sure that it is going to be available somewhere.

My concern is that if it is not in the regulations and if we do put it in the regulations, then the Lieutenant Governor in Council may or may not do it. At the present time, this information is not universally available to either pharmacists or physicians in Ontario and, therefore, the patients of this province may be in some kind of jeopardy. I am not happy about that.

The Vice-Chairman: Maybe Dr. Dyer would like to comment.

Dr. Dyer: In these matters, as I understand it, we have the power in the regulations to request or require information from manufacturers, wholesalers, etc. That does not limit us to not requiring this. We can require this kind of information if we so wish, but it would be spelled out in the regulation. I think it would be best in the regulation because we would want to vary it from time to time perhaps, and add information or requests for information as we see fit. It can be done.

Miss Stephenson: What you are saying is that the regulation which might require this should not be so limited as to exclude the possibility of requiring other information. I am not asking for that kind of information. I am asking, can you draft a regulation that will ensure the provision, or the availability, of this information which will ensure that every manufacturer in this province, whose drugs are going to be benefits under the Ontario Drug Benefit Act, will be required to provide that information to you so that from you, or from some source in the Ontario drug benefit office, that information will be available to pharmacists and to physicians?

Dr. Dyer: The regulating mechanism, the enabling legislation, allows us to draft such regulations. We can do it. Whether we will do it is a matter of particular policy.

Miss Stephenson: Now I am asking if you will do it?

Dr. Dyer: We will be requiring that type of information as a condition for listing. Yes. We do it at the present time.

6:20 p.m.

Miss Stephenson: Yes and no; you do it at the present time. Not in the fullness of the kind of information which is increasingly necessary--

Dr. Dyer: Let me finish the answer. In many cases, manufacturers supply to us formula information on a confidential basis. As you will understand, they would be very reluctant to provide us with information that would give their formulas away.

Miss Stephenson: I am not asking for the formulas. I am simply asking that for every drug that is listed, every single component must be listed. I am not really interested in the formula; neither are you at the present time, nor would you be. For the drugs that are listed therein, that information can be disseminated because it does not do anything to the secret formulary activity of the manufacturer. It simply lists all the ingredients. That is all. We require that of foods these days. Why in the name of all that is holy do we not require it of drugs, which may potentially be much more lethal?

Dr. Dyer: It is a very good question and one we would have to discuss with pharmaceutical manufacturers to see what the impact would be and whether they would participate in the plan if we required that kind of information for dissemination. We can and will require that as a condition for listing. You are asking if we would require it as a condition for listing and then disseminate it.

Miss Stephenson: No, on request only, when there is a question about the content of a medication. It would be great if you produced a document that lists the ingredients in every single drug every time you produce a formulary, but that is not practical. The thing that would be practical would be to have it in one place within the ministry so that it would be available to physicians and to pharmacists as they are serving their patients.

The Vice-Chairman: Dr. Stephenson, could I suggest that if at some point you remain dissatisfied that the minister is going to deal with the regulations in a way you like, you might want to consider amending the bill. You can do that in committee of the whole House.

Miss Stephenson: Quite honestly, if I were to have firm confirmation today that it is the intent of the minister to assure us the information will be collected and made available upon request, then I will not go through that exercise.

Hon. Mr. Elston: I cannot give the honourable member that assurance. It is a very dangerous precedent to have the minister commit to providing information about the components of a manufacturer's product to anyone who requests it as a physician or pharmacist. For instance, Upjohn is represented here. It might want to know the components of the items that are listed in a particular drug that Merck has done. I do not think it is a very good step for me to take. I am sure Upjohn and Merck would not operate that way, but I just do not think that would be a very good undertaking for me to give to you. I cannot give you that.

I can give you the undertaking that we will require certain indications if there are changes, for instance, in sourcing. That is a very good indicator and I have no problems with that, but when you ask me to tell anybody who comes to me for information about those components, I have real problems with that. You ought to understand that I do.

Miss Stephenson: Then may I ask that you commit yourself to collecting that information to be shared confidentially with the Drug Quality and Therapeutics Committee?

Hon. Mr. Elston: The DQTC already gets that.

Miss Stephenson: No, it does not. I am assured by members of the DQTC that they do not have full knowledge of all the ingredients in all the drugs and drug substances that are listed in the formulary and under their supervision.

Dr. Dyer: If the members of the DQTC requests it, they are provided with that information. When they request it, they are given the actual formula provided by the manufacturer, which lists not only the ingredients but also the amounts and the method by which they are mixed. The members of the DQTC are provided with that information if they request it. They could very well say they are not aware of all the ones in the formulary because they have not asked for them, but if they ask for the information, they are provided with it.

Mr. D. S. Cooke: On a point of order: I understand Dr. Stephenson's concern. We had a lengthy debate on this when we started the bill off and I think the suggestion the Vice-Chairman made is the appropriate one. If Dr. Stephenson wants an amendment, she should prepare it for committee of the whole House.

Miss Stephenson: Okay, fine.

Hon. Mr. Elston: Before you move too far away, I must bring to the attention of the committee that we have done the work Dr. Stephenson requested and drafted a proposed confidentiality provision which we have yet to pass some information on.

The Vice-Chairman: While you are providing that however--

Hon. Mr. Elston: Have you not got it?

Miss Stephenson: I have not seen it at all.

The Vice-Chairman: No one has seen this.

Hon. Mr. Elston: We have drafted this. It has not been given to legislative counsel. We can also do this in committee of the whole House if it wishes but I wanted to circulate it right now.

The Vice-Chairman: Be that as it may, I was trying to clarify that in section 1, the definitions section, the official opposition amendments that were held down have now been dealt with. Is that everybody's understanding?

Section 1 agreed to.

The Vice-Chairman: In terms of the government amendment in respect of confidentiality, which has not previously been seen--

Hon. Mr. Elston: That is right. It is provided for circulation.

The Vice-Chairman: --it is provided for circulation today and will be introduced in the committee of the whole House. Is that correct? This is for your information. That means we have finished Bill 54, but we will not be reporting it back until we have done Bill 55.

Miss Stephenson: This could apply to both Bills 54 and 55.

Hon. Mr. Elston: It is just for Bill 54.

The Vice-Chairman: It is just for Bill 54 and will be introduced in the committee of the whole House; it is for information.

Mr. Jackson: Why are we putting this to the committee of the whole House when we could probably deal with it in a short space?

Hon. Mr. Elston: I have not circulated it yet. That way, you do not want to deal with it when you are not sitting.

Mr. Jackson: If you would listen, we are not meeting again until next Monday. That gives far more time than the minister has given on many other amendments.

Mr. D. S. Cooke: The danger in that is if we open up another section next week in the committee, I am sure there will be other things legal staff will find that have to be amended in committee of the whole. We will finish Bill 54 and anything else that has to be done we will do in committee of the whole House.

The Vice-Chairman: Let us clarify what has happened. The minister has circulated a draft confidentiality provision. If you want to deal with it the next time the committee meets, so be it, but if you decide it should be introduced in the committee of the whole House that would be fine too. We do not need to get into that issue at 6:30 p.m. You can think about this over the next few days. I now suggest Bill 54 is done. It will not be reported back.

The committee adjourned at 6:28 p.m.

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

ONTARIO DRUG BENEFIT ACT
PRESCRIPTION DRUG COST REGULATION ACT

MONDAY, MAY 5, 1986

STANDING COMMITTEE ON SOCIAL DEVELOPMENT
CHAIRMAN: Johnston, R. F. (Scarborough West NDP)
VICE-CHAIRMAN: Reville, D. (Riverdale NDP)
Allen, R. (Hamilton West NDP)
Andrewes, P. W. (Lincoln PC)
Baetz, R. C. (Ottawa West PC)
Davis, W. C. (Scarborough Centre PC)
Jackson, C. (Burlington South PC)
Miller, G. I. (Haldimand-Norfolk L)
Offer, S. (Mississauga North L)
Reycraft, D. R. (Middlesex L)
Ward, C. C. (Wentworth North L)

Substitutions:
Cooke, D. S. (Windsor-Riverside NDP) for Mr. Allen
Leluk, N. G. (York West PC) for Mr. Davis
Stephenson, B. M. (York Mills PC) for Mr. Andrewes

Clerk: Carrozza, F.

Staff:
Baldwin, E., Legislative Counsel
Nigro, A., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Health:
Elston, Hon. M. J., Minister of Health (Huron-Bruce L)
Bernstein, D., Director, Legal Services Branch
Dyer, Dr. A. E., Deputy Minister
Psutka, Dr. D. A., Assistant Deputy Minister, Emergency Services, Laboratories and Drug Programs

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday, May 5, 1986

The committee met at 3:50 p.m. in room 151.

Mr. Chairman: I will advise the committee of some of the problems we have, just complications, and I hope that by the end of the meeting we will be able to make a couple of decisions.

As you know, we have decided to deal with Bills 54 and 55 until Thursday night. If Bill 55 is not finished at that time, we will report both of them back, and they will be finished in committee of the whole House. As a result, I was presuming that we would probably be moving our deliberations on Bill 30 to next week.

We raised this with a couple of the deputants. John Fauteux of the Ontario English Catholic Teachers' Association, one of the prime players in the whole business, contacted me. He was quite anxious to be the representative for the association. Unfortunately, he is going away for two weeks starting next Monday, but he will be available this Thursday.

I think Dr. Stephenson's point that it would probably be best to deal with this when all the members are here is a good one. I wanted to advise you that we will either have to hear him on Thursday, in the midst of dealing with these other matters, or take up Mr. Cooke's initial motion about stopping tomorrow night and starting on Thursday.

Now that we are actually sitting here, perhaps I can go on. The other complication we have, while you are thinking about how you want to handle the OECTA problem, is that l'Association des enseignants franco-ontariens also wishes to make a presentation on Bill 30 before this committee.

Their argument is as follows. They are a member of the Ontario Teachers' Federation, but the OTF will only be able to make a presentation on matters of consensus within its broad membership. Therefore, it will not be able to represent that francophone unit of teachers. Because their position is at odds with that of OECTA, one of the other members of that broad group, which is also making its own presentation, they feel they should be able to do so.

Their concerns range on a number of major matters. One is that the whole question of en bloc transfers of schools will cause some difficulties for them when one considers a number of things. For instance, OECTA bargains for the elementary and the secondary panels, and this association bargains only for the elementary panel. As a result, they are concerned about their not being covered properly in this. They have pleaded with me to be heard as well.

I indicated that we had turned down the Metro Toronto separate board, even though it is such a large board, because we wanted to have some parameters on this and that I could not guarantee that request, and perhaps the committee would suggest they should send in their concerns in writing to us as early as they can, but that I would pass on the concerns because it is an organization in its own right, representing the only group of teachers directly concerned which will not have its viewpoint put forward.

Miss Stephenson: Is it one or several matters that are of grave concern to AEFO?

Mr. Chairman: They mentioned about three matters to me on the phone.

Miss Stephenson: About which there is not consensus.

Mr. Chairman: On which there is no consensus.

Miss Stephenson: Has there ever been a precedent for a group such as OTF coming before the committee with a final summation and an integral group such as AEFO being given some time during the presentation to present its point of view regarding this, about which OTF has not been able to reach consensus?

Mr. Chairman: It might have been done in the past; I am not sure. It is particularly politically sensitive this time because the president of OTF at the moment is from the AEFO. Mr. Matte feels very awkward about taking any of the time of the overall group when he is representing it as the president. It has that extra complication this time, which makes it fairly politically sensitive.

Mr. Baetz: It regards itself as a provincial umbrella organization, does it not?

Mr. Chairman: Yes.

Mr. Baetz: I do not know what my colleagues or other members of the committee think, but obviously there has been a growing separation of thinking between this group and others, particularly in the Ottawa area.

Mr. Chairman: Yes.

Mr. Baetz: There are two very distinct, separate points of view. If I had my druthers, I would propose that we listen to them. I will defer to the others here on that.

Mr. Chairman: We have everybody here at the moment, so why do we not try to make a decision? Mr. Baetz, speaking personally, thinks we should provide them some time to present. Is there any opinion from the Liberal caucus?

Mr. Reycraft: I am sorry, I did not hear your question.

Mr. Chairman: This is on the AEFO and whether we would provide it time to become the seventh deputant, if you will, on Bill 30.

Mr. Reycraft: My immediate reaction is that it does have provincial status, and that is different from the Metro separate school board, whose request we denied last week. Because of the divergence of opinion that exists, it probably would be helpful to the committee to hear that opinion. Therefore, without wanting to extend that part of the process, I think it would be in our best interest to hear them and allow them that status.

Miss Stephenson: There is as well a French trustees' association, which is a part of the Federation of Ontario School Trustees' Associations, and I have no idea whether it has made a request or anything of that sort. If it has not, that is fine. I recognize the concern of AEFO, which is very significant in this question, because of the peculiar kind of situation in which it finds itself.

Mr. Chairman: Mr. Cooke and Mr. Reville, would you be in favour of the AEFO being added to the list to become the seventh deputant?

Mr. D. S. Cooke: Yes.

Mr. Chairman: I will talk to them and perhaps suggest that, given that a number of their concerns will be handled by the umbrella group, they restrict their commentary to those things which are not and which are particular to their concern. That might limit the matter to the three or four items they enunciated with me. I will do that.

4 p.m.

What about the second matter, the question of Mr. Fauteux's request to be heard this Thursday, if possible? There are a number of ways we could deal with this, if I may put out some suggestions. One would be to make some time on Thursday for Mr. Fauteux to make a presentation, even though we will be dealing with Bill 55 at that time. He might feel a little bit awkward about that because the minister would not have made his statement about his amendments at that stage.

Another approach would be to go back to Mr. Cooke's initial motion, which was to suggest that we cut off the debate on Bill 55 tomorrow night rather than Thursday night and refer everything that is left over back to the committee of the whole House.

One more solution would be to say to Mr. Fauteux that we have committed ourselves to this course of action; we have changed a lot and we are concerned about changing a lot and perhaps it would be better if someone else from the organization, perhaps the incoming president, Mr. Cooney, were to make the presentation.

Those are the options we have before us at the moment. I do not know how far we are going to get with Bill 55. Unfortunately, we have not started; so we do not have a feel for how quickly it will go. Any comments?

Mr. Reycraft: I am somewhat reluctant to see us change the position we stated as a committee last week. I am sure if we do so in this situation, there will be someone else with an extremely unique set of circumstances who will be before us tomorrow to plead some sort of special consideration as well. I still hope we can finish with Bill 55 by 6:30 p.m. tomorrow.

Mr. Chairman: We now have a consensus. I think we should maintain our present approach. I will indicate to Mr. Fauteux that he should get himself prepared and if we happen to be finished by tomorrow night, then he can be first up on Thursday after the minister. If not, then another representative of the organization will have to make the presentation.

ONTARIO DRUG BENEFIT ACT
PRESCRIPTION DRUG COST REGULATION ACT
(continued)

Consideration of Bill 54, An Act to Authorize and Regulate the Payment by the Minister to Specified Persons on Behalf of Specified Classes of Persons for the Dispensing of Specified Drugs; and Bill 55, An Act to provide for the Protection of the Public in respect of the Cost of Certain Prescription Drugs.

Mr. Chairman: As you recall, we have not finalized Bill 54 at this point. I would prefer to leave the question on confidentiality until we have dealt with Bill 55, if it is all right. The matter fits both bills and could be dealt with in committee of the whole if we chose. Is there any problem with that? Do you prefer to go with it now, Mr. Elston?

Hon. Mr. Elston: After having given it out on Thursday, I have not had any feedback from that. If we had a little feedback on it, perhaps that will be of assistance, so that we are prepared to do something a little more definitive on Bill 55 when we reach it. I have no problem with your doing that. If I could have a comment or two from anybody who has concerns, or from my opposition critics in any event, that might be of assistance.

Mr. Chairman: All right, why do we not do that. We can deal with it as it affects both bills. Perhaps Mr. Bernstein could take us through that amendment to section 8c of Bill 54, affecting confidentiality.

On section 8c:

Hon. Mr. Elston: On Thursday we handed out the draft of this section in our language. The section that has been handed out today is actually the legislative rendition, or at least the rendition by the legislative counsel. This is the legal way of saying what we handed out on Thursday. If there were comments about what may or may not have been anticipated in the section, or the wording of the sections we gave the other evening, you might comment on that and we could address any difficulties.

Mr. Bernstein: The first thing I should say is that this is a motion that applies only to Bill 54. It refers to the administration of the act and that is a matter that falls on the ministry. The college also has a role to play with respect to Bill 54, but it is essentially the ministry that administers that bill.

Bill 55 is framed differently. That is enforced by the college and the Health Disciplines Act already sets out a confidentiality requirement for the college. I suggest this amendment, or this motion, be thought of only in connection with Bill 54.

It is based loosely on the current provision in the Health Insurance Act for confidentiality. The two programs, the Ontario health insurance plan and the Ontario drug benefit plan, have many similarities. The basic concept is set out in subsection 8c(1), which states that a person who is engaged in the administration of the act shall not disclose "any information about an eligible person or about the supplying of listed drug products to an eligible person."

Subsection 8c(2) sets out the circumstances in which disclosure may be made. The first is "to the person's counsel"--that is, to a person who is

engaged in the administration of the act. There may be circumstances, for example a public inquiry, where it is perfectly right and proper for the person engaged in the administration of the act to disclose information to his or her counsel for purposes of those proceedings, but that cannot really be brought into the category of the administration of the act. Therefore, it is a separate one. An exception for disclosure to a person's counsel is made in a number of other statutes administered by the ministry.

Clause 8c(2)(b) reads, "with the consent of the eligible person." That seems to be automatic and would not seem to require any further explanation.

Clause 8c(2)(c) sets out the various statutes whose administration may incidentally or not so incidentally involve the disclosure of information. In the same way as the confidentiality requirement of the Health Insurance Act sets out the statutes whose administration would permit the disclosure of information otherwise required to be confidential, so clause 8c(2)(c) sets out the various acts.

Finally for clause 8c(2)(d), there may be a great deal of incidental information respecting eligible persons or the supplying of listed drug products. This is not intended to put a total blanket of inaccessibility on information. Clause 8c(2)(d) sets out the real thrust of the confidentiality requirement, which is that the privacy of the eligible person should be respected in respect of the listed drug products that are provided or prescribed for that person.

Mr. Chairman: Would the committee like to reopen this section and then move on to Bill 55?

Hon. Mr. Elston: That is a new section, Mr. Chairman.

Mr. Chairman: I am sorry; section 8c is a new section. There seems to be consensus on that. We are considering Bill 54 and are now dealing with a new section, which is section 8c.

Mr. Offer moves that Bill 54 be amended by adding thereto the following:

"8c(1) No person who administers this act or the regulations shall disclose any information about an eligible person or about the supplying of listed drug products to an eligible person.

"8c(2) Subsection (1) does not apply to the disclosure of information,

"(a) to the person's counsel;

"(b) with the consent of the eligible person;

"(c) in connection with the administration of this act, the Prescription Drug Cost Regulation Act, 1986, the Health Disciplines Act, the Health Insurance Act, the Ministry of Health Act, any other act administered by the Minister of Health, the Coroners Act, the Provincial Offences Act or the Criminal Code (Canada), or any regulations made thereunder;

"(d) if the communication does not disclose the identity of a drug that was prescribed or supplied for an identified eligible person."

Mr. Chairman: We have had an explanation by Mr. Bernstein. Is there any discussion?

Miss Stephenson: Are we going to do subsection 8c(1) first?

Mr. Chairman: Certainly we can.

Miss Stephenson: I have a couple of questions.

Mr. Chairman: All right, let us go through them one at a time. Is there any discussion on subsection 8c(1)? If not, all those in favour, please indicate.

Motion agreed to.

Mr. Chairman: Let us move to subsection 8c(2).

Miss Stephenson: Does clause 8c(2)(a) refer specifically to the eligible person's counsel?

4:10 p.m.

Mr. Bernstein: It is intended to refer to the counsel of the person engaged in the administration of the act.

Miss Stephenson: Therefore, the information which may have been provided would then be shared with the counsel of the person who has been charged with a breach of this confidentiality. Is that right?

Mr. Berstein: If it were a matter of a charge, an inquiry or any situation that required that person to engage counsel, that person should be entitled to disclose to counsel the information that is relevant.

Mr. Chairman: Is there general agreement with clause 8c(2)(a)? All those in favour, please indicate.

Agreed to.

Mr. Chairman: On clause 8c(2)(b), consent of the eligible person, are there any questions?

Miss Stephenson: No.

Mr. Chairman: All those in favour, please indicate.

Agreed to.

Mr. Chairman: On clause 8c(2)(c), in connection with the various acts, are there any questions?

Miss Stephenson: The pharmacist is not administering the act. At least, he is functioning under the act and could share that information with a physician at any time surely.

Hon. Mr. Elston: Or with the eligible person's consent, in which case you would have it as a physician, I would think.

Miss Stephenson: How many acts is the Minister of Health responsible for administering?

Mr. Bernstein: I believe it is something like 31.

Miss Stephenson: Some of them have absolutely nothing to do with anything related to the delivery of health care.

Mr. Bernstein: Yes.

Miss Stephenson: Why do we say "any other act administered by the Minister of Health" should be in here?

Hon. Mr. Elston: It is a catch-all phrase. We want to make sure that--

Miss Stephenson: It is a waste-basket.

Hon. Mr. Elston: We could list the 25, I suppose; I guess that would be the other way of doing it.

Mr. Chairman: It is the usual methodology to do this and to presume that is not going to cause any particular problem for people within this act itself, which I would presume would be the case. Most of them would have very little impact on this act.

Miss Stephenson: One would hope.

Mr. Chairman: If you would like, we could list them.

Mr. Bernstein: In the Nursing Homes Act, for example, there are a number of statutes where one can anticipate possibly an occasion arising where it is necessary. In the Nursing Homes Act, the Public Hospitals Act, regulations under the Public Hospitals Act, the Ambulance Act, circumstances might well arise. It might also be relevant in the Mental Health Act. It would be difficult to try to anticipate all the possible circumstances in advance and only list those statutes. There are certain ones we could exclude but they really would not make much difference. I think the burial act could be excluded.

Miss Stephenson: Yes, one might think, but I thought you were transferring that one.

Mr. Chairman: All those in favour of clause 8c(2)(c), please indicate.

Agreed to.

Mr. Chairman: On clause 8c(2)(d), are there any questions?

Miss Stephenson: I would like to ask a question about this. Does this really say that the information can be disclosed if the identity of the drug is not disclosed?

Mr. Chairman: That is how I read it.

Mr. Bernstein: Yes, it does say that.

Mr. Chairman: What is the implication of that?

Miss Stephenson: Some individuals might be distressed to have the information disclosed that they were eligible persons. This simply says that as long as you do not tell what drug they got, you can talk about anything.

Mr. Bernstein: Yes.

Miss Stephenson: I am not really sure that is what was intended; at least, I hope it was not.

Hon. Mr. Elston: What would you suggest as an alternative?

Miss Stephenson: I do not draft legislation.

Mr. Chairman: We certainly have been doing a lot.

Miss Stephenson: Yes, with help.

Mr. Bernstein: Why stop now?

Miss Stephenson: I really have some concern about including this section at all, if all it excludes is the proscription against the breach, if it is only the identity of the drug that is--

Mr. Chairman: Identified.

Miss Stephenson: Yes.

Mr. Chairman: Is there any member who would like to speak to this?

Mr. Bernstein: We might well add the additional consideration just mentioned by Dr. Stephenson that identifies a person as eligible. As I indicated before, this clause makes it clear that what is being protected is the central information that the person engaged in the administration of this act might have respecting the eligible person--that is, that the person has had certain medication prescribed. Prima facie, that is nobody's business but the eligible person's.

Did I say prima facie? I did not mean that. I meant at first blush.

Miss Stephenson: If we are really trying to protect the privacy of the patient, surely more than just the identity of the drug is at stake. I wonder whether we need clause 8c(2)(d) at all. The other three exceptions provide for fairly significant rationale for allowing an administrator to disclose information. I really have no full understanding of it.

Dr. Dyer: It is for statistical information.

Miss Stephenson: What is for statistical information?

Dr. Dyer: Clause 8c(2)(d), so that we can collect numbers of drugs prescribed, classes of drugs and that sort of thing, without identifying a person.

Miss Stephenson: I am not sure I want to provide you with the possibility of breach of privacy for the purposes of statistics gathering.

Mr. Chairman: The purpose has been put forward. The objection to the requirement for the section has been put forward. If you support the motion, you are putting this forward in statistical terms. If you are opposed to it, it will be deleted. All those in favour of clause 8c(2)(d), please indicate.

Agreed to.

Section 8c agreed to.

Mr. Chairman: We will now move on to Bill 55. Bill 54 is finished, but we will not take a vote on it until we report both bills back, in whatever condition Bill 55 happens to be.

Mr. Leluk: That is Bills 55 and 30.

Mr. Chairman: Thank you, Mr. Leluk. I knew there must have been a reason for your coming up with that one.

You have before you the original Bill 55 and Mr. Nigro's helpful document. I will again try to start off with his document. The clerk will use the original act and we will try to make sure that we have everything covered as we go through.

Mr. Jackson: Do you have any further amendments to carry?

Miss Stephenson: Oh, yes, a bundle as of today. I received them yesterday.

Mr. Jackson: I am not even on the B list any more.

Mr. Chairman: Do all members have copies of the new amendments as of today?

Mr. Jackson: No.

Mr. Chairman: Who can help me with that?

Clerk of the Committee: I just got this--

Mr. Chairman: It is okay. The clerk is always the last to know.

Miss Stephenson: The chairman is usually the last to know.

Mr. Leluk: I have a point of order, Mr. Chairman.

Mr. Chairman: Just a moment, Mr. Leluk, until I find out what I have. As I understand it, Mr. Bernstein, the package I have just been handed, of which we do not seem to have enough copies, contains everything that follows the information in Mr. Nigro's document.

Mr. Bernstein: As far as I know, that includes all the motions since Mr. Nigro's document.

Mr. Chairman: So some of these might have been distributed prior to today, but some of them have not.

4:20 p.m.

Mr. Bernstein: Yes.

Mr. Leluk: I would like to ask a question. This is about the fifth time that members of this committee have been in receipt of amendments right at the moment when they have come in for discussion of the bill. I would like to ask the minister why these amendments could not have been circulated to the committee in advance of coming here at 3:30 or 3:45 today to discuss the bills.

I am serious. Is it being done to aggravate the members of the two opposition parties? Why can we not receive these amendments in advance? Surely they must have been ready this morning. Why could they not have been sent to our offices so that we could have a look at them before coming here today?

We have to put up with this kind of nonsense day in and day out. It is piecemeal legislation, with amendments coming in every day of the week, it seems. The committee members have to sit here and digest this material right on the spot without any opportunity to look at it, digest it or even discuss it with their own members on the committee. I do not think that is fair. Why is this the case?

Hon. Mr. Elston: It is the case because, as you will admit if you look at Bill 54, there have been a number of changes in that legislation. We have to update what is happening with Bill 55. We finished our deliberations on Bill 54 at 6:30 or so on Thursday evening. We have to work on Friday. We have to put things together so that we can review them ourselves on Monday. These last items have just been completed because we had to go through a number of changes to try to get them to comply with what we have in Bill 54. If you are talking about piecemeal dealing with legislation--

Mr. Leluk: I want to tell you--

Hon. Mr. Elston: Just a minute. You guys have been changing the course and nature of Bill 54. We have to do our stuff.

Mr. Leluk: We have not.

Hon. Mr. Elston: Yes, you have by your amendments.

Mr. Leluk: Our amendments have been on your table for you to see and for the government to look at. We have not been dropping them in your office or handing them to you before this committee on the day you come here to discuss them.

Mr. Jackson: Since March 25.

Mr. Leluk: We are not pleased about it on this side.

Hon. Mr. Elston: To be quite honest, when we have been dealing with amendments, we have had to make changes. We have had to make sections comply with the ad hoc amendments that you make. You stick in bits and pieces of things here and there. It is not as easy to come up with all this stuff overnight as you seem to think it is. The one section on confidentiality which we circulated on Thursday, for instance, I got nary a call about. Then Dr. Stephenson brings up her concern about a couple of sections right here at this time.

Miss Stephenson: That was just in the wording. That was all.

Hon. Mr. Elston: Come on, Bette. You did not phone me. Nobody said it was good, bad or indifferent. Here you were suggesting we take sections right out of that proposed amendment.

We have tried to make all this stuff comply with where we are now. We will go through these sections. We know there will be some debate on sections. I have no difficulty with that. The other thing we have to keep in mind is

that Bill 55, if we are going to parallel it with Bill 54, which I think is the intention of this committee, is not what it was designed to be when it was first brought into this House around November 7.

Mr. Leluk: More like the eleventh hour.

Hon. Mr. Elston: Our task is going to be to see how Bill 55 is going to work. I can see us dealing on the spur of the moment with suggestions made by members of the committee again. We cannot anticipate each of the problems that an addition to a section will give us. You can go ahead and scream, but--

Mr. Leluk: I am not screaming. I am just trying to--

Hon. Mr. Elston: If you did not want to make any amendments to the bills as brought in, there would not be any problem. Our bills were there on November 7.

Miss Stephenson: My heart bleeds for the minister at this point.

Hon. Mr. Elston: You do not do any of the drafting of the legislation. You just told us that was not your job.

Miss Stephenson: I have not been doing it in this legislation. I have been asking questions which I felt were important for my edification.

Hon. Mr. Elston: Those introduce amendments. That is what you have been doing on the spur of the moment.

Miss Stephenson: When those amendments seem to be appropriate, I have done just that. The minister is going to have to learn that is what happens in committee.

Hon. Mr. Elston: I understand that. That is what we are doing. We are responding to those needs.

Miss Stephenson: We try to provide the information in a reasonable time so that it can be examined by all. I received my copy of this five minutes before I left the Legislature.

Mr. Jackson: That is when you got yours? Is that what the minister said?

Miss Stephenson: That is what he said.

Hon. Mr. Elston: That is the final version. We had our discussions this morning. We had to go through our final discussions of this and that was the final printing.

Mr. Chairman: I understand the need to ventilate some of the frustration, believe me, but I am wondering if there is any point of order in this or do you want me to start with the clause by clause? It was not a quorum call but the election is now on for--

Mr. Reville: The government fell; it is no big deal.

Mr. Jackson: Nobody noticed.

Mr. Chairman: Good work, Mr. Reville. Should we just continue with the bill anyway?

Mr. Reville: You probably should not have mentioned your new job.

Mr. Chairman: That is right.

Mr. Leluk: You will get a reaction tomorrow morning.

Mr. Chairman: That is up to the government.

Let me start. I will again read through and try to catch each of the amendments as it comes up. If I do not get them, please make me aware of them.

"Bill 55, An Act to provide for the Protection of the Public in respect of the Cost of Certain Prescription Drugs.

"Her Majesty, by and with the advice and consent of the Legislative Assembly of the province of Ontario, enacts as follows:

"1. In this act,

"'designated' means designated by the regulations;

"'dispenser' means a person who dispenses a drug pursuant to a prescription;

"'drug' means a drug as defined in clause 113(1)(d) of the Health Disciplines Act;

"'inspector' means a person appointed under section 10 of this act."

That was moved by Mr. Ward. There is a change from the original on that section of Mr. Nigro's report in that we will be putting in a definition of "dispenser" that was not in the original act, but we have all had that before since January.

Mr. Ward: I have a couple to add.

Mr. Chairman: You do? All right.

Mr. Ward: Those will be 1a and 1b.

Mr. Chairman: Those would be farther down then. Would you like me to continue along? No. We have some amendments here from the official opposition. Who would like to do these?

Miss Stephenson: In this act, because of the fact that all of the legislated activity within Bill 55 is going to be based upon the designation of drugs and drug products for a document which is called a formulary, it is felt appropriate that the designation have some specific requirements that are spelled out in the act rather than leaving it entirely to the regulations.

I am sure that the minister is probably going to suggest that I am flogging a dead horse, but it is my understanding from a large number of the manufacturers that they would have absolutely no concern about supplying the complete list of all ingredients, not necessarily for total distribution

publicly throughout the entire province, but a complete list of the ingredients therein, in order that physicians and pharmacists will have easy access to the information which is now becoming increasingly necessary related to sensitivities and problems with vehicles, excipients, inert substances, colouring, flavouring materials, etc. It was suggested that the manufacturers would be absolutely opposed to that. Many of the manufacturers have said very clearly that they would not be opposed to providing that listing.

The other item that is of some concern is that when a drug is designated within the formulary, it remains so for a period of time even though there may be a very significant change in the source of the materials that are being used in the drug. Sources may move half a hemisphere or a full hemisphere away from one another with perhaps not the same kind of information being made available to the minister who is responsible for all of this.

4:30 p.m.

It was our feeling that when a change in sourcing occurred, the minister was to be informed by the manufacturer. The minister could then determine what needed to be done if that change in sourcing was reported.

Mr. Chairman: That was also your intent, as you indicated, in Bill 54. Do you wish to read that in as an amendment and have us discuss it at this point?

Miss Stephenson: Yes.

Mr. Chairman: Miss Stephenson moves that section 1 be amended by striking out the words "'designated' means designated by the regulations" and substituting the following therefor:

"'designated' means a drug or substance which is approved for listing in the Ontario Drug Formulary and

"(a) for which the manufacturer has provided to the minister a complete list of all ingredients therein (including vehicles, excipients, inert substances, colouring, flavouring materials, etc.); and,

"(b) for which any change in the sourcing of any of the above ingredients must be reported by the manufacturer to the minister forthwith."

There was also a clause (c), which does not seem to be in Mr. Nigro's copy. Do you want to read that one as well? If so, read it now.

Miss Stephenson: That is a definition of a drug or drug substance and does not really fit with "designated."

Mr. Chairman: You have heard the motion as read by Dr. Stephenson, which would have a new substituted definition of designation with (a) and (b). You have had an explanation from her.

Hon. Mr. Elston: You have left out clause (c).

Mr. Chairman: Clause (c) will not be included at this point.

Miss Stephenson: Clause (c) is the definition of "drug."

Mr. Chairman: We have had an explanation from Dr. Stephenson as to why this is being omitted. Is there any discussion?

Mr. D. S. Cooke: As we go through this bill, we should check back with what we have done in Bill 54. While I know Dr. Stephenson feels very strongly about this issue, this matter was not included in Bill 54, and to be consistent, we should not include it in Bill 55 either.

Hon. Mr. Elston: I would also like to note that since certain drugs are not part of our benefit package, the reference to the Ontario Drug Benefit Formulary is a little out of place.

Miss Stephenson: I removed the word "Benefit." I am sorry. I said the Ontario Drug Formulary, and I should have noted that.

Hon. Mr. Elston: Oh, did you? I am sorry, but that does not help our situation. The cash market may be much broader than that of the Ontario Drug Benefit Formulary. There are certain things not listed as benefits.

Mr. Chairman: What we have here is a difference in the definition of the formulary. One of you is presuming it to be the ODB formulary, with all its regulations. This suggests that it is the listing for each of the individual drugs we are anticipating in Bill 55. Is that my understanding here? That is the distinction: we do not have a definition that indicates that as yet. I think that is what Dr. Stephenson is suggesting.

Dr. Dyer: It was asked by pharmacy, and contemplated, that Bill 55--since it deals with interchangeable drugs--could provide a mechanism to list certain drugs that are interchangeable but not necessarily benefits.

At present, all the interchangeable drugs are benefits, but there are a number of drugs that pharmacy believes are interchangeable and would like to see if possible, if they meet the requirements. They could be listed somewhere for the benefit of the general public, but they would not necessarily be benefits. For that reason, it was avoided in this particular definition.

Mr. Chairman: We had this debate when we were discussing Bill 54. We are obviously going to run over the same ground from time to time, but is there a need to go further on this? Are the positions understood?

Mr. Leluk: The fact that this was not passed in Bill 54 does not make it any less an important matter. Dr. Stephenson has pointed out the reasons.

Mr. Chairman: It is true that just because we do not have the specific wording in one act, it does not mean that it is incoherent, as it were. Your point is well made. It is also important, however, that we try to remember what we have done in the previous act before we go on to this one.

Miss Stephenson: While I am aware that the decision of the court gives the minister the right to publish a formulary, and I am aware that the formulary provides the foundation for the Ontario Drug Benefit Act, it also provides the foundation for this act at the request of the Ontario Pharmacists' Association. They wanted that publication for its usefulness, not only for the specific purpose of the ODB, but also for the purpose of Bill 55.

I want to know where in the legislation there is going to be a description of the degree of responsibility the minister has for inclusion of information within the formulary, which is the cornerstone of all this. You determined that it was not necessary in Bill 54, as I understand it, because "formulary" was not mentioned there. You are then going to say it is not

necessary in Bill 55 because you are not going to mention formulary there.

In all this legislation related to the sale of drugs in Ontario, where is the public guaranteed that there will be certain criteria met to ensure that their health is protected by the activities of the Minister of Health?

Hon. Mr. Elston: The short answer is that it is done in the regulations. We said before, as you know, that the regulations really are the formulary under the ODB. That is it. The regulations will set out the determinants here as well. The formulary is nothing more than regulations. David may want to expand on that.

Mr. Bernstein: One of the motions the government will be moving later is an amendment to section 12, the regulation-making power. It will provide that the Lieutenant Governor in Council may make regulations prescribing conditions to be met by products or manufacturers of products in order to be designated as interchangeable with other products. That parallels an amendment made in section 11 of Bill 54, the regulation-making power.

Miss Stephenson: That was not designation, that was listing.

Mr. Bernstein: That is right.

Miss Stephenson: There is a difference.

Mr. Bernstein: Let us say "analogous" rather than "parallel," then.

Miss Stephenson: Would it be appropriate to stand down this amendment and hold it until we get to the regulation section? We can then include it in that section as a specific requirement for activity. If that is reasonable, I will withdraw the amendment at this point and reintroduce it in section 11 for purposes of more appropriate inclusion in the act.

Mr. Chairman: It would not be any more out of order at that point than it is now. If you wish to withdraw it until that particular time, that is fine.

Miss Stephenson: I shall do that.

Mr. Chairman: The motion is withdrawn.

You may notice that Mr. Ward moved a motion we have had before, which Mr. Nigro is trying to put into the body of this. I think it might be wise to have the specific definition read out. We just talked about "designated," which we are not changing, by the looks of it.

If you could, I would like to have you read out what is on Mr. Nigro's document, the definition of "dispenser." I do not know how you want to operate. We are jumping around if we move to the one which includes the operator of a pharmacy as well.

Mr. Ward: The clerk was picking those up automatically before. In the interest of time, can we not keep going that route?

Mr. Chairman: That is fine with me. I am reading them all into the record.

Mr. Ward moves that section 1 be amended by adding thereto the following definition:

"'dispenser' means a person who dispenses a drug pursuant to a prescription."

Hon. Mr. Elston: We have repeated the definition of "dispenser."

Mr. Chairman: It has been withdrawn. It does not exist. I have heard no other amendments to "designated," so I am--

4:40 p.m.

Miss Stephenson: The words "drug product" were used in Bill 54, if we are making this one parallel to it.

Mr. Bernstein: "Listed drug product." In this bill it is "interchangeable product," which comes along very shortly.

Mr. Chairman: It comes later. They are not exactly the same. Drug was a separate definition as well under Bill 54, as you may recall. Drug is the same as it was in the original. Do we want to vote on each one of these definitions as we go through them? It might be the easiest thing.

"Designated." All those in favour, please indicate. Those opposed? Carried.

"Dispenser," as just moved by Mr. Ward. All those in favour, please indicate. Those opposed? Carried.

"'Drug' means a drug as defined in clause 113(1)(d) of the Health Disciplines Act." Is there any discussion?

Miss Stephenson: That is not an amendment.

Mr. Chairman: No. It is part of the bill. I am just taking each definition as we go through. I will mention when there are amendments.

All those in favour, please indicate. Carried.

"'Inspector' means a person appointed under section 10 of this act." It does not change because of any amendments, does it, Mr. Bernstein? Is the number the same?

Mr. Bernstein: As far as I know.

Mr. Chairman: If necessary, we can always come back and clean up the number.

Is there any discussion? I am informed that the numbers are the same.

All those in favour, please indicate. Opposed? Carried.

I believe this is the same as it was before. "'Interchangeable product' means a drug or combination of drugs identified by a specific product name or manufacturer and designated as interchangeable with one or more other such products." That is the same wording.

There is an amendment from the official opposition. Miss Stephenson moves:

"That section 1 be amended by adding the following after the words 'with one or more other such products': by the Drug Quality Therapeutics Committee, provided that the committee is satisfied that the product has demonstrated:

(a) equal bioavailability of the active ingredients, established in appropriate pharmacokinetic studies;

(b) equal therapeutic effectiveness, established in clinical trials pursuant to the regulations under the Food and Drugs Act for the approval of a new drug; and

(c) a frequency and severity of side effects no greater than that of the original product, established in clincial trials pursuant to the regulations under the Food and Drugs Act for the approval of a new drug."

Would you like to speak to it? I know it is a matter you talked a lot about during the hearings.

Miss Stephenson: One of the questions which plagued some of us during the hearings was the conviction among certain chemists and others that the only thing that was necessary to determine the interchangeability of a product was relative equality of bioavailability. There have been a significant number of studies that are in the process of being published at present which are clearly not in support of that single, narrow definition. There is very real concern that the method being used at present does not even determine the appropriate levels of bioavailability, because the subjects used for the testing of the so-called interchangeable product are not subjects with the disease for which the active ingredient is supposed to be prescribed.

During the last four weeks, I have pursued this question with a number of those who teach pharmaco-therapeutics, therapeutics and medicine within the five universities in Ontario which have medical schools. One of the things that shocked me was that only one of a total of 14 of the individuals approached, was aware that such a limited testing procedure was required in Ontario. All the others were convinced that the DQTC had been requiring appropriate clinical studies before it designated drugs to be interchangeable and were shocked to find that was not done.

The consensus was very clearly that it was not possible to designate a drug as interchangeable unless reasonable clinical studies had been carried out which demonstrated the effectiveness of the alleged interchangeable drug in the conditions for which the drug was to be prescribed, and unless studies had been carried out which clearly demonstrated that the toxicity and the side effects of the alleged interchangeable drug were within reasonably narrow limits of the same range of side effects and toxicity as found with the original drug.

Therefore, in establishing this bill which is based upon interchangeability, as is Bill 54, I feel strongly--and my caucus has supported me in this--that it is essential that there be requirements in the law which ensure appropriate testing will be carried out to be as sure as possible that the health of the people of this province is being protected when we state that a drug is interchangeable in the regulation.

That determination has to be made by the minister on the advice given by the DQTC, but there is an absolute conviction by those with the responsibility for teaching therapeutics to medical students throughout this province that it is necessary to have clinical studies in addition to bioavailability testing done.

Mr. D. S. Cooke: If this section were carried, what would be the effect of this section on generic drugs that are already designated as interchangeable but that may not have undergone clinical studies? Would it not mean that we would revert to all brand-name drugs in Ontario for a significant period? What would be the financial implications of that for consumers in this province?

Hon. Mr. Elston: Dr. Psutka might be able to answer that.

Dr. Psutka: If we had to go back to apply these criteria to everything in the book that was interchangeable, there would be a hiatus on the generic manufactured drugs at this point. If we were to apply this criterion to every generic that was submitted for interchangeability in the future, a large proportion of the cost the innovator carries out at present would be passed on to the generic. You would be getting double cost added. In other words, you would be paying for the research and development by the innovator and you would be adding to R and D costs for generics.

I would like to clarify again for the members what goes on now. The DQTC basically uses a scientific criterion that is first based upon the fact that the drug has a similar quantity of active ingredient. This is tested by the provincial laboratory to ensure the chemical stated is in like quantity in the tablet. It looks at the dissolution rate to ensure the chemical is not bound in concrete, that it dissolves in a similar fashion to the originator's tablet, and it looks at the level of the ingredients in the blood. We then know there is the same chemical in there, that it dissolves in a similar fashion and that it appears in the bloodstream in a similar fashion.

I hear Dr. Stephenson saying that she would like us to take it one step further and ensure, despite it being identical in all fashions to the innovator, that it act in the same way. That would make it a little bit different from what we have now.

At present, the DQTC has addressed interchangeability. As soon as we can get to the point of publishing a new formulary, it is our intent to promulgate to the industry new rules of interchangeability. These would include the fact that if there are areas of debate about a product, we would insist upon the trials that Dr. Stephenson is promoting to be carried out before the product is accepted for interchangeability.

In other words, rather than do it on everything, we would do it on those where there is a variance from industry-wide accepted standards. A classic example--

Miss Stephenson: Such as what?

4:50 p.m.

Dr. Psutka: There was the ibuprofen debate that just went through the courts. We had to go to court to delist a product.

Mr. Leluk: Why was it listed in the first place?

Dr. Psutka: Because the information given in the first place took the committee to the point where it was on the edge. At that point, it should have asked for further testing, but it did not have that authority.

Mr. D. S. Cooke: As I understand Dr. Stephenson's amendment, this

would mean, although it is very clear, that every generic drug now on the market that nas not had clinical studies would no longer be designated as interchangeable. For example, if this amendment were carried, would this not result in cimetidine being pulled out of the stores and only Tagamet being sold in Ontario? Valium is another example. I am not sure Dr. Stephenson wants to go to the degree where the day after this bill receives royal assent, Ontario becomes a province where only brand names can be sold.

Miss Stephenson: That is not the purpose of the amendment.

Mr. D. S. Cooke: Read it. That is what it does.

Miss Stephenson: The purpose is to ensure--

Mr. D. S. Cooke: I know what the purpose is, but read your amendment and understand the implications of what you are proposing.

Miss Stephenson: The implications of what I am proposing are that at present, this act which is to become the foundation of pharmacotherapeutics in Ontario will ensure that appropriate testing will be done on all drugs that are listed in the formulary.

Mr. D. S. Cooke: Dr. Stephenson--

Miss Stephenson: May I finish?

Mr. D. S. Cooke: I have the floor.

Mr. Chairman: Listen to her response, Mr. Cooke.

Mr. D. S. Cooke: It is bloody ridiculous when we put amendments through where Dr. Stephenson says this is the intent. Just read your amendment. That is not what it carries out at all.

Miss Stephenson: If there is going to be a major disruption, I am sure there are ways to resolve the disruption. The point is if we are going to go ahead with this legislation, we must have the appropriate foundation for it. We do not have it at present.

Mr. D. S. Cooke: If I might just point out so Dr. Stephenson understands what she has moved--

Miss Stephenson: I understand what I have moved.

Mr. D. S. Cooke: Before we get to clause 1(a) it says, "satisfied that the product has demonstrated." Clause 1(b) says that equal therapeutic effectiveness must be established in clinical trials. It does not say anything about may or may not do clinical trials. It says we have to do clinical studies before it is interchangeable. That means all the generics now on the market would have to come out.

Miss Stephenson: I would be pleased to attempt to resolve the difficulty of removing everything immediately. All I am trying to do is to make sure that in the future we have the appropriate foundation for this type of activity. I am not convinced we have that in this bill as it is currently written. That is why this amendment was drafted.

If the members would like to have an inclusion within this bill--and I

am not sure it is appropriate, but it could be done--that there would be a mechanism for ensuring the ongoing inclusion of the drugs that are currently within the formulary while clinical trials are being carried out on them, I would be perfectly happy to be a party to that activity. I am not suggesting everything be removed. I am suggesting as we go forward with this activity, every single drug must be treated in the same way.

It is not correct for Dr. Psutka to say that simply because the active ingredient is measured appropriately in healthy subjects that the formulation of a like drug is precisely the same as another one. You cannot tell that without doing clinical trials. The DQTC has enough acumen to determine what the extent of those clinical trials should be. I am not prescribing them specifically in terms of numbers or size; I am saying there is a format which has been developed for clinical trials by the Food and Drugs Act in Ottawa. Those can be used as models by the DQTC for the appropriate designation of the clinical trials that are necessary.

I am not trying to say here they must be of 1,000 patients or 5,000 patients all with the same disease and all of the same age. I am saying we anticipate they will use their clinical capability to determine what those trials should be, because upon them and the minister rests the responsibility for ensuring that these drugs are interchangeable.

My concern is that if we do not do this, then we can be sure that what will happen in the future is that every physician in this province will write "no substitution" on every prescription to ensure that the drug product he or she has become accustomed to and knows best is the one which is used in order not to suffer any potential difficulties. That worries me because it defeats the purpose of the act.

Mr. Chairman: Is there any further discussion on the amendment?

Mr. Reycraft: Before you call the vote, I am trying to recall information we received during the hearings on these two bills. Is there any precedent in another province for the testing procedure Dr. Stephenson is describing?

Miss Stephenson: It has nothing to do with what we do.

Mr. Reycraft: That is the point I was getting at.

Miss Stephenson: That does not make it right.

Mr. Reycraft: Even with the DQTC, we are providing better protection for the consumer in Ontario than is provided for people in any other province in Canada.

Miss Stephenson: Just because it happens to be better does not mean it is the best. We are going to put this into legislation, which is something we have never done before. We have not legislated this type of activity before in this province. It has been a matter of policy, a matter of activity that has gone on as a result of agreement. If we are going to put it into legislation, we had better be damned sure that we know we are protecting the health of the public as best we can.

Mr. Reycraft: I gather the answer is that there is no precedent.

Miss Stephenson: Is there a precedent for writing into legislation the potential grandfathering Mr. Cooke is currently worried about?

Mr. Chairman: Certainly. There is often a grandfathering in legislation. I am not sure whether there is legislation in the country that parallels this legislation.

Miss Stephenson: No. There is not.

Mr. Chairman: In the particular, no. In the general, yes. There is often a grandfather.

Miss Stephenson: If Mr. Cooke is worried about that, then surely another section could be developed to be an adjunct to this one to ensure that the concern he has expressed will be dealt with appropriately during the time required to carry out the necessary trials.

Mr. D. S. Cooke: I am going by recommendations from a former health minister who said this amendment did not make any sense. Mr. Norton called. I believe he called other committee members and suggested this amendment was absolutely silly.

Miss Stephenson: I have also talked to Mr. Norton about that and I know the source of the rationale he provided for you.

Hon. Mr. Elston: Name names.

Miss Stephenson: You have not named names so I do not know why I should, but I am afraid I am much more likely to subscribe to the opinions of professors of therapeutics than former ministers of health or even current ministers of health who happen to be lawyers.

Mr. Chairman: Oh, Bette.

Miss Stephenson: I am sorry.

Mr. Chairman: I think we understand the issue. We have spent an awful lot of time on this. Essentially, you understand what the argument comes down to. You support the motion, you understand the testing implications and if you wish to have any grandfathering of that, as Dr. Stephenson says, that could be a subsequent clause. If you think the present testing system is appropriate, then you will vote against this. That is the choice, unless there are amendments further on about ordering for the DQTC, which would be possible.

Any further discussion on this amendment?

All those in favour of Dr. Stephenson's amendment?

All those opposed?

Motion negatived.

Miss Stephenson: I hope you are ready for the implications of this act, because they will be horrendous.

5 p.m.

Mr. Chairman: The definition of "interchangeable product" as read. Any further discussion? Are we all paying attention? All right, we are going to take the vote on the original definition of "interchangeable product" then, if there is no other amendment.

All those in favour, please indicate. All those opposed? Six to four.

"'operator of a pharmacy' means, (a) the holder of a certificate of accreditation for the operation of a pharmacy under section 135 of the Health Disciplines Act, or (b) the operation of a pharmacy operated in a hospital approved as a public hospital under the Public Hospitals Act;"

There was a suggestion by the government to move the deletion of clause (b). It would be easier to vote against clause (b) if you do not want it. Is there any discussion on clause (a) of the definition of "operator of a pharmacy"?

Mr. Bernstein: Mr. Ward was thinking of making a motion.

Mr. Chairman: Is that just for the deletion of clause (b)?

Mr. Bernstein: Yes, it is.

Mr. Chairman: We can just vote against clause (b). That is the easier way to deal with it, if you wish.

Mr. Bernstein: I see.

Mr. Chairman: Unless you are replacing it with something else.

Mr. Ward: No. The amendments are to add sections 1a and 1b, not to deal with these definitions.

Mr. Bernstein: I am sorry, I am confused, I did not realize--

Mr. Chairman: We can deal with clause (a) of "operator of a pharmacy." Let us deal with "the holder of a certificate of accreditation," etc. Any change in that or any discussion?

Mr. Bernstein: Wait a minute. We are actually moving deletion of clause (b).

Mr. Chairman: That is correct. We do not need to do that. We will pass the first one and automatically the word "or" will be dropped if you vote against it. Understood? All those in favour of the "operator of a pharmacy" clause (a), please indicate. All those opposed? Carried.

To vote against clause (b) is to vote for its deletion and the "or" would automatically drop from clause (a). Any discussion?

Miss Stephenson: Does this apply to "the operator of a pharmacy operated in a hospital" which is operating as a general community pharmacy?

Mr. Bernstein: Yes, it does because that pharmacy is the holder of a certificate of accreditation.

Mr. Chairman: Thank you, Mr. Bernstein. Any discussion then?

All those in favour of the inclusion of clause (b), please indicate. All those opposed? The motion is defeated. The section is deleted and the word "or" will come out.

Did you say you had a sub here for us?

Mr. Ward: We have not finished yet. We have not done "prescription" and "regulations."

Mr. Chairman: I think prescription stays the same:

"'prescription' means a direction from a person authorized to prescribe drugs within the scope of his or her practice of a health discipline directing the dispensing of a drug or mixture of drugs for a specified person;"

Any amendments to that or discussion? None. All those in favour of the definition, please indicate. All those opposed? The definition carries.

I have a definition of "registrar," which is added to the bill. In Mr. Nigro's document it comes first before we get to the one that is currently in the act for "regulations."

Mr. Ward moves that "'registrar' means the registrar of the Ontario College of Pharmacists;"

Any discussion? All those in favour of the definition of "registrar," please indicate? All right. The registrar is now the registrar, you will be pleased to know, Mr. Registrar. You now exist.

"'Regulations' means the regulations made under this act."

That one deserves a lot of discussion. All those in favour, please indicate. All those opposed. Carried.

We have a section 1a and section 1b from Mr. Ward.

Mr. Ward moves that the bill be amended by adding thereto the following section:

"1a. This act does not apply to the dispensing of a drug in or by a hospital approved as a public hospital under the Public Hospitals Act if the drug is dispensed for a patient or an outpatient of the hospital."

Interjection: It is the second page.

Mr. Chairman: I have it. I had one just before it on my list so I was a little confused.

Interjection: I think there was a typo.

Mr. Chairman: Is it understood that it was on the second page of those distributed this afternoon? This is just the exemption of the hospital. Is there any discussion? Mr. Jackson, this is on the amendments that were distributed this afternoon.

Mr. Jackson: How does this differ from the one they had on page 4?

Mr. Chairman: I do not think it does. It is exactly the same.

Miss Stephenson: Then why is it?

Mr. Chairman: I am not sure. It is as close to the same as I have ever seen anything. It is a different type face, but otherwise it is interchangeable.

Mr. Jackson: I just wanted to catch all the redundancies.

Mr. Chairman: All the nuances.

All those in favour of Mr. Ward's amendment, please indicate. Those opposed?

Motion agreed to.

Mr. Chairman: Mr. Ward moves that the bill be amended by adding thereto the following section:

"1b. Subsections 2(2) and 3 and sections 3, 4, 5, 7 and 8 do not apply in respect of an interchangeable product that does not require a prescription for sale."

It is the same as the one that has just been handed out except for the clarification of the numbering, which is 1b; it was put down as another 1a. Do you wish to speak to that, Mr. Ward?

Mr. Ward: This is to cover over-the-counter products.

Mr. Chairman: This is to cover the OTCs, as all those of us who use the jargon say these days.

Miss Stephenson: I thought these were prescription drugs. The name of this act is An Act to provide for the Protection of the Public--ha, ha--in respect of the Cost of Certain Prescription Drugs. OTCs are not prescription drugs so you do not need the section.

Mr. Ward: My understanding is that occasionally over-the-counter drugs are prescribed.

Miss Stephenson: They do not need to be.

Mr. Jackson: My question has to do with the order in which this is being done. Why are we doing subsection 2(4)?

Mr. Ward: We are doing section 1b.

Mr. Jackson: Are we not on page 3 of your 12th-hour package?

Mr. Ward: Actually we are on page 1.

Mr. Jackson: Page 1 of the 12th-hour package.

Mr. Ward: We are on page 2 of the 11th-hour package.

Mr. Jackson: I thought that was already--

Interjection: You tore it off.

Mr. Ward: I told Mr. Reycraft I tore it off the front and put it as page 2 because it said 1b instead of 1a, My apologies.

Interjections.

Mr. Chairman: I tried to clarify this but I gather you missed me

saying it. The first one that was moved in my package was actually on the second page and it was entitled section 1a. Unfortunately, so was this one. When it was read into the record by Mr. Ward, he indicated it would be section 1b and then made the appropriate changes. I tried to catch that. I gather it is because we are dealing with so many documents that it was missed.

Mr. Jackson: It is a mistake and we now have clarified it.

Mr. Chairman: Except that the question--

Mr. Leluk: You should take it back and bring it in tomorrow.

Mr. Jackson: Now I can follow it. I was having great difficulty understanding how I was about to waste my vote.

5:10 p.m.

Mr. Chairman: Such cynicism from one so young.

All those in favour of Mr. Ward's motion, please indicate.

All those opposed, please indicate.

Motion agreed to.

Mr. Chairman: Shall section 1, as amended, carry? I did not do that initially. Unfortunately, we have just moved on to section 1b. We should have taken a vote on section 1 as an entirety. We have to do that.

Mr. Jackson: Mr. Chairman, before you call the question, there are other amendments.

Mr. Chairman: I am sorry. Are they to section 1 or 1a?

Miss Stephenson: They are to 1.

Mr. Chairman: I switched to the original document; I apologize. It carried the other out of order, Mr. Jackson, for which I apologize.
1 So we are actually still dealing with section 1. You have some definitional amendments you would like to move.

Miss Stephenson: The purpose of including these in the definition section was in order to try to provide a parallel with Bill 54, where "best available price" is now a defined entity.

Mr. Chairman: We can refer to that section rather than--

Miss Stephenson: We could do that if that is agreeable because that would mean the wording would be exactly parallel and it is not at this point. It requires that equality of wording.

Mr. D. S. Cooke: They are not exactly parallel, but under the suggestion from the official opposition on price as well, we would want to include that.

Miss Stephenson: That is also in Bill 54 now.

Mr. D. S. Cooke: Right. So when we get to that section we will have to make sure we include some parallel, although there are some differences too.

Mr. Chairman: Counsel is suggesting that we will be dealing with the matter later in the act as we did in Bill 54, but then we never did have a definition. The question that is being raised is whether or not you wish a definition and then refer back to--I guess we could not go back to Bill 54 in terms of its definitions because it did not have one in that section. What is your recommendation, counsel?

Ms. Baldwin: If the committee is going to proceed to make this bill parallel to Bill 54, I would say that it probably will not be necessary to have a further definition to section 1. The committee, I think, is left with the alternative of either voting finally on section 1 or holding off on the final vote on section 1 until it is satisfied it has been dealt with elsewhere.

Mr. Chairman: We can leave it open and not take the vote on section 1 and then come back if the committee feels it has not been handled appropriately at the subsequent level. Why do we not do that and then you can decide whether or not it is appropriately handled?

Mr. D. S. Cooke: Hold open section 1?

Mr. Chairman: Yes, we will hold open section 1 so that we can come back to it if you do not think it is handled appropriately at a later time.

Mr. Jackson: We have had a bad experience in trying to reopen a section. I would rather we agreed that we would hold the whole section open until such time as we can come back and address it.

Mr. Chairman: This applies to "best available price"--

Miss Stephenson: --and "price," yes.

Mr. Chairman: It does not apply to the Drug Quality and Therapeutics Committee, I would presume. Do you wish a definition for that?

Miss Stephenson: It is our feeling that the existence and the role of the Drug Quality and Therapeutics Committee are something which should be defined in this legislation or at least noted in this legislation so that it will be understood that that committee has a very specific role.

The definition could simply say: "The Drug Quality and Therapeutics Committee is a committee established by the minister to determine which drugs and substances are to be listed as interchangeable or designated as interchangeable."

Mr. Chairman: Is that as far as you go then? Will that be the wording?

Miss Stephenson: Yes. You do not want the formulary mentioned because it is a regulation. You do not want benefit mentioned because there are some things that are not a benefit. Therefore, the only thing we can say is that it is the responsibility of the Drug Quality and Therapeutics Committee to determine which drugs and substances are to be listed as interchangeable.

Mr. Chairman: Dr. Stephenson moves a new definition: "The Drug Quality and Therapeutics Committee is a committee established by the minister to determine which drugs and substances are to be listed as interchangeable."

That is in order. I am reminded by legislative counsel that if the term comes up several times in the act, that is when you have a definition. We do not know that at this stage, but it is still in order. Can we have a discussion about this now?

You have spoken to your reasons for this, Dr. Stephenson. Is there any discussion?

Mr. D. S. Cooke: Where is the committee actually referred to in the bill?

Ms. Baldwin: Not at all, at this point--

Mr. Chairman: I do not think it is, as yet.

Ms. Baldwin: --but in the regulations it may very well be specifically referred to now.

Mr. Bernstein: The committee was referred to in the amendment to section 1 that was proposed by the official opposition and which was defeated about 20 minutes or so ago.

Mr. D. S. Cooke: If we want to put it in, that is fine. I am just not sure what is accomplished by a definition if nothing is ever referred to in the bill later on. The definition is meaningless without the committee being given actual power and being referred to in the rest of the legislation.

Miss Stephenson: Since it has been determined that the formulary is a regulation, the role of the DQTC should indeed be defined in the regulation. There will need to be an amendment to the regulation in order to ensure that that role is included therein.

Mr. Chairman: Could I have one point of clarification since counsel has asked me. I read the wording of Mr. Nigro's section, deleting the words "the Ontario Drug Benefit Formulary" but I think he used the word "designated" rather than "listed." Is that what you prefer?

Ms. Baldwin: That is good.

Miss Stephenson: My word is "designated" in this act; it is not "listed." It is "listed" in the other act.

Mr. Chairman: I noted the change that counsel had and the clerk as well. I have to admit he is usually on the ball.

Mr. D. S. Cooke: I am not sure what we are accomplishing by this. Dr. Stephenson has not answered my question yet.

Miss Stephenson: What I was suggesting to you, Mr. Cooke, is that now, because of determinations which have been made by this committee, there will need to be an amendment to the regulations to more clearly spell out the role of the Drug Quality and Therapeutics Committee, or the action which that committee will take in that regulatory process. Therefore, obviously, there will need to be an amendment.

Mr. D. S. Cooke: There is no enabling section in the legislation in order to do that. The definition section is not an enabling section.

Miss Stephenson: I did not say it was.

Mr. Chairman: We should clarify this because if you do not feel it is necessary you can vote against it. But Dr. Stephenson stood down the definitional amendments to place them later on.

Mr. D. S. Cooke: No, this is it. This is the definition.

Mr. Chairman: No, it is prior to this. Prior to all of this we were at the-- no, I guess we were not.

Miss Stephenson: No, it was "best available price" and "price."

Mr. D. S. Cooke: I do not disagree with what Dr. Stephenson thinks she is doing, but I do not think she is doing what she thinks she is.

Miss Stephenson: What is it I am doing then?

Mr. D. S. Cooke: You want to have the committee set up in legislation and then you want to have the guidelines for the committee clearly set up. You need a section later in the legislation that says, "The minister has the power to make regulations whereby he will set the criteria to make drugs interchangeable," and that is then given over to the Drug Quality and Therapeutics Committee. But you are not doing that by simply putting a definition in.

Mr. Jackson: We will clean that up by the time we get to the end of the bill. We invite Mr. Cooke's support in order to assist us.

Mr. D. S. Cooke: I am not trying to be snarky; I am just trying to point out something, Mr. Jackson.

5:20 p.m.

Mr. Chairman: I could try to be helpful at this point. Since we are not going to take the final vote in this section, because of the other two matters, until we go on further, we could proceed through and see if we do use this term again with an amendment around the enabling powers within the regulations. If we do, then we may want to come back and put this back in. If we do not, we may decide that it is not necessary. Would that be helpful?

Miss Stephenson: Mr. Chairman, there very clearly is an enabling section within this piece of legislation itself which provides the Lieutenant Governor in Council with the authority to make regulations prescribing products as interchangeable where the Lieutenant Governor in Council considers it advisable and in the public interest so to do. The role of the DQTC is very specifically in that section of the regulation-making power. If you want the DQTC defined only in that section, that is fine. I do not care as long as it there and as long as people know what it is.

Mr. Chairman: Perhaps it would be helpful, since we are leaving this open, that we move on to the next section, and after we have got through to the regulation powers section, you can decide whether what was done there is sufficient and reintroduce it as a definition or just have it included at that point. Why do we not do that and make things move more smoothly for us?

Miss Stephenson: Okay. Fine.

Mr. Chairman: We are standing that down. Is there anything else on sections 1a and 1b?

On section 2:

Mr. Chairman: Subsection 2(1) reads as follows: "If a prescription directs the dispensing of a specific interchangeable product, the dispenser may dispense in its place another product that is designated as interchangeable with it."

I do not have any amendments on that at this point. Is there any discussion on subsection 2(1), which is the dispensing, essentially, of interchangeable products?

Miss Stephenson: I cannot support any of this section because there is insufficient evidence to determine the interchangeability.

Mr. Chairman: Is there any further discussion on 2(1)?

All those in favour of subsection 2(1), please indicate.

Those opposed.

Five to four; the motion is carried.

Mr. Chairman: Subsection 2(2) reads: "If a prescription directs the dispensing of a specific interchangeable product, the dispenser, on the request of the person presenting the prescription, shall dispense in its place another product that is designated as interchangeable with it."

Mr. Ward moves that subsection 2(2) be amended by inserting after "of" in the second line "the person for whom the product was prescribed or" before "the person presenting the prescription."

Mr. Chairman: That is the way it was changed in January. Thank you, Mr. Ward. Is there any discussion on this subsection?

All those in favour, please indicate.

All those opposed.

Five to four; carried.

Interjection.

Mr. Chairman: I do have trouble with that from time to time.

Mr. Jackson: If you have got clearly five votes, fine. You did not have five votes last time. If you do not have four opposition votes, that is fine, but--

Mr. Chairman: I will be much more rigorous about it each time, if you would like.

Mr. Jackson: When you have got five in favour, Mr. Chairman, I think it is essential that those five be recorded. If you have three, four, two or one, it hardly matters if the maximum opposing those are four. Clearly, you did not have an indication.

Mr. Chairman: Votes can be won three to two in this committee as well, quite possibly, but I will retake the vote if you would like because all members must vote. If some did not, I will be clear to get it this time.

All those in favour of subsection 2(2), please indicate.

Five; I do not have to take any others, I gather.

All those opposed.

Carried.

Mr. Chairman: The quorum bell seems to have ended or whatever it was, so you do not have to worry about that at this point.

Subsection 2(3) reads as follows:

"If a prescription directs the dispensing of a specific interchangeable product, the dispenser shall not supply the product without informing the person for whom the product was prescribed or the person presenting the prescription, in the manner prescribed by the regulations, of the right to request an interchangeable product."

We have an amendment.

Mr. Leluk moves that subsection 2(3) be amended to read as follows:

"Every operator of a pharmacy shall post in the pharmacy, in the manner prescribed by the regulations, a sign informing the public of the right to request the dispensing of an interchangeable pharmaceutical product."

Just to make it easier for you, this will be the same wording as the recommendation by the Ontario College of Pharmacists on page 5 of Mr. Nigro's document.

Does Mr. Leluk or someone wish to speak to the motion? We had a fair amount of discussion about this during the hearing period.

Mr. Leluk: We heard from many of those appearing before the committee about the time factor and about the hours that will be consumed as, under the proposed government legislation, pharmacists are mandated to tell each and every consumer coming into the pharmacy that there are interchangeable products. It was suggested that a sign visible to consumers be posted in the pharmacy. The sign would say the public has the right to request the dispensing of an interchangeable product.

Where is the thing? I cannot find my amendment. Do you have one?

Miss Stephenson: We had one, but it was not exactly the same wording.

Mr. Chairman: Mr. Leluk, it would be useful for the clerk if you would write out the amendment as you moved it. For the debate we are holding, it is the same wording as that put forward by the OCP.

Mr. Leluk: Right.

Mr. Chairman: Is there any further discussion of this motion?

Miss Stephenson: I do not think there is any question that the OCP

amendment is superior to the one we submitted. It very clearly spells out that the regulations as established by the Ontario College of Pharmacists will prescribe the form of informational sign that is to be posted. It also provides for the full understanding of the public that there is a right to request substitution of that specifically prescribed drug. My only concern is that it uses the phrase "pharmaceutical product," which is not a phrase we have used previously.

Mr. Chairman: While it is being written, you may like to change it to read "interchangeable drug."

Miss Stephenson: Or to read "interchangeable drug or product."

Mr. Chairman: How about "interchangeable product" as defined? Would that be all right? Is that a friendly amendment, Mr. Leluk?

Mr. Leluk: Yes.

Mr. Chairman: The last two words, "pharmaceutical product," would be replaced; rather, "pharmaceutical" would be deleted.

Mr. Leluk: Yes.

5:30 p.m.

Mr. Chairman: Is there any further discussion? As there is none, I will read it out, just in case some of you do not have the document. Subsection 2(3) is to be amended to read as follows:

"Every operator of a pharmacy shall post in the pharmacy, in the manner prescribed by the regulations, a sign informing the public of the right to request the dispensing of an interchangeable product."

We have had a request for a recorded vote.

The committee divided on Mr. Leluk's motion, which was negatived on the following vote:

Ayes

Baetz, Jackson, Leluk, Stephenson, B. M.

Nays

Cooke, D. S., Miller, G. I., Offer, Reville, Reycraft, Ward.

Ayes 4; nays 6.

Mr. Chairman: The motion is defeated 6 to 4--or 7 to 4, if we count the small fellow from Nickel Belt (Mr. Laughren), but he does not count.

Mr. Cooke: Six and a half.

Mr. Chairman: Six and a half? Agreed. Going back to subsection 2(3)--

Mr. Ward: I move that section 2 of the bill be amended by adding--

Mr. Chairman: We have not read past it. We have just--

Hon. Mr. Elston: I think Mr. Ward was reading the original amendment. This memo is built around changes made in January, and it was one of the sections added at that time.

Mr. Ward: The January changes that were read--

Mr. Chairman: It has to be moved by whoever suggested it. What I read was moved by Mr. Ward, and is in the Nigro document.

Mr. Ward: We have to vote on subsection 2(3).

Mr. Chairman: I will read it again just to remind you.

"If a prescription directs the dispensing of a specific interchangeable product, the dispenser shall not supply that product without informing the person for whom the product was prescribed or the person presenting the prescription, in the manner prescribed by the regulations, of the right to request an interchangeable product."

All those in favour, please indicate. Those opposed?

Motion agreed to.

Mr. Ward: Can I move my additions now?

Mr. Chairman: Mr. Ward moves that section 2 of the bill be amended by adding the following subsection:

"(3a) Subsection 3 does not apply if,

"(a) the amount to be charged for supplying the product specified in the prescription is not more than the least amount that would have been charged for supplying a product that is interchangeable with it and available in the dispenser's inventory;

"(b) a claim for payment will be submitted to the Minister of Health under section 5 of the Ontario Drug Benefit Act, 1986 in respect of the supplying of the product; or

"(c) the product is being supplied pursuant to a repeat of the prescription."

Mr. Jackson: If I understand this correctly, this means that subsection 3, under which you have to inform the patient, does not apply if the amount of the interchangeable costs more money.

Interjection: No, less.

Miss Stephenson: The specific prescription.

Mr. Jackson: It reads, "is not more than the...amount that would have been charged." So it has to be less?

Mr. Chairman: The same or less.

Mr. Jackson: Does that mean they do not have to inform the customer?

Mr. Ward: They have to inform him if it costs more money.

Mr. Jackson: Do they have to inform him at all that they are interchanging?

Interjection: No.

Mr. Jackson: So they can interchange drug products without informing the patient? He goes in with one prescription and gets another without being informed, if it costs less money.

Mr. Chairman: Yes, unless it says "No substitution."

Miss Stephenson: So automatically, whenever a prescription is received by a pharmacist, it will be dealt with on the interchangeable basis unless the prescribed drug costs the same or less than the least expensive interchangeable drug in the formulary and there is no requirement to inform anybody you are doing this--the physician or the patient or anybody else. We will have total and utter confusion and that should really make things just delightful for everybody.

Mr. Jackson: Can we stand down that section until I look at that a little more closely? I am shocked at the implications of that. I guess everybody else figured it out but I had not.

Hon. Mr. Elston: You had since January.

Mr. Jackson: I have had since January and several drafts but did not know which final draft you would settle upon, Mr. Minister.

Mr. Chairman: I am in the hands of the mover on this.

Mr. D. S. Cooke: If the implication is that Mr. Jackson is going to draft an amendment, that is fine; let us have the amendment, but just to stand it down until Mr. Jackson understands it? We want to get these bills passed this year.

Mr. Chairman: I thought we were doing so well too.

Mr. Reville: Do not pay any attention to that, Mr. Jackson.

Mr. Chairman: Thank you, Mr. Reville. You are very helpful.

Mr. Jackson: I have made a request to stand it down.

Mr. Chairman: The mover does not wish to do that. He would like it dealt with at this point.

Mr. D. S. Cooke: I think it would be appropriate if there was an amendment. I thougnt the Conservatives had an amendment at some point--I may be wrong--about prior notification for automatic substitution.

Miss Stephenson: We did.

Mr. Jackson: That was defeated in the previous batch, I thought.

Mr. D. S. Cooke: We have not dealt with it yet.

Miss Stephenson: "Excepting those circumstances when the physician has directed no substitution, a pharmacist may substitute an interchangeable

drug upon receiving the consent of the patient and shall thereafter inform the prescribing physician."

Interjection: Which section is that?

Miss Stephenson: It is actually 2(2).

Mr. Chairman: I was a little confused when the motion was made on 2(3) that we had not heard anything on the two above that.

Miss Stephenson: Subsection 2(2) actually states that "If a prescription directs the dispensing of a specific interchangeable product, the dispenser, on the request of the person for whom the product was prescribed or the person presenting the prescription, shall dispense..." That is one circumstance. If the pharmacist has made the information available to the individual carrying the prescription, or the person for whom it is prescribed, and the consent of that individual is achieved, that is a different circumstance from 2(2).

When that is done, thereafter, "the prescribing physician shall be informed of the substitution." In fact, the prescribing physician should be informed of the substitution in 2(2) as well. In all circumstances in which a substitution is in fact facilitated, the physician who wrote the prescription for a specific drug should be notified so that physician will have some record of what has been substituted for the drug which was prescribed. We have already had difficulties with that and the drug reaction.

Mr. Chairman: It is quite possible to see how that kind of amendment could take place here, if you wish to move it.

Miss Stephenson: It could, in fact, be the final subsection of 2, but the circumstance where the pharmacist has made the information known and the patient has decided to take the interchangeable drug, is a circumstance which is different from 2(2), because 2(2) is "on the request of" and the second one is as a result of--

Mr. Chairman: Whether or not notification shall take place is something that could, as you say, be dealt with separately--

Miss Stephenson: As a separate subsection--

Mr. Chairman: --which might be the easiest way to deal with it--

Miss Stephenson: --to cover both circumstances.

5:40 p.m.

Mr. Chairman: We could try the easiest way to deal with it if there is a general consensus on a physician and patient knowing about these things, or it could be done right where we are at the moment.

Miss Stephenson: In subsection 2(3).

Mr. Chairman: Yes, in subsection 2(3a), which we are on now. I will leave it up to you as to where you would like to place it.

Mr. Jackson: Subsection 2(3a)?

Mr. Chairman: Yes, we are now at subsection 2(3a).

Mr. Jackson: Yes, but 2(3a) has been approved.

Mr. Chairman: That is right. And clause (a), which you were just asking about--

Interjection: "The amount to be charged."

Miss Stephenson: But surely clause (a) should deal with the receipt of the patient's consent to have that substitution made.

Mr. Reycraft: Does not clause (a) relieve the pharmacist of the responsibility of giving an explanation for the interchangeable if there is no cheaper interchangeable available?

Mr. Chairman: Correct.

Mr. Reycraft: It does not force him to dispense the interchangeable. That comes in an earlier subsection, I think. I am just trying to respond to Mr. Jackson's question about the meaning of this.

Mr. Jackson: There is one obvious difference. One does not have to rely on the consent of one's 12- or 13-year old daughter, who may present herself to the pharmacist and have him explain, "I'm substituting an interchangeable for the medication in Mummy's prescription." I think this ties it specifically to the patient.

Mr. Reycraft: But that has nothing to do with clause (a).

Mr. Chairman: I think clause (a) could have been separate from subsection 2(3a)--and now I am getting confused as well. Can you help us out here, legal counsel?

Ms. Baldwin: It sounds like the concerns being raised are unrelated to the motion before you. They may be raised, if they are to be raised, as possible future subsections to this section, clarifying the rules of the game with regard to interchangeability.

Mr. D. S. Cooke: I do not know the positions of the Liberal members. I think there is a consensus among the opposition members, however, that if a doctor prescribes a particular drug product before it is to be substituted, the patient should be informed that there is going to be a substitution. If that should be in a different subsection, fine; perhaps we could get something drafted.

Ms Baldwin: It sounds like your concern, Mr. Cooke, is with regard to clarifying subsection 2(1). That deals with cases in which, quite contrary to the request of the person presenting the prescription, a substitution was made. You are suggesting that something--

Mr. D. S. Cooke: The other sections deal with price, do they not?

Mr. Chairman: Yes.

Mr. D. S. Cooke: We are not talking about price. We are talking about substitution and people having the right to know about it.

Miss Stephenson: In actual fact, subsection 2(2) provides the pharmacist with an opportunity to receive the request of the patient for a substitution. In that circumstance, we know the patient has consented.

In subsection 2(3), the pharmacist is required to inform the patient of an interchangeable drug which is lower-priced. It is silent, however, on whether you must have the consent of the patient to provide that interchangeable drug. And that is really what we are attempting to achieve: getting the consent of the patient.

It seems to me that it should really be an addendum--

Interjection: But it would not come to subsection 2(3).

Mr. D. S. Cooke: No, because in 2(3), the only obligation of the pharmacist is to inform the patient that there is a choice. Then the patient would obviously say, "I would like the less expensive drug."

You and I are concerned about the pharmacist making an automatic substitution where "No substitution," or anything like that, is on the prescription. There is just a generic equivalent that is cheaper or that he has in his stock. That is what we have to protect against.

Miss Stephenson: Yes, okay.

Mr. Chairman: I have an offer from legal counsel that I am sure you cannot refuse. She suggests that while we proceed with subsection 2(3a), she will try to draft something to meet the desire being expressed here.

Thank you very much.

Miss Stephenson: It should also ensure the physician is notified by some means in every case of a substitution.

Mr. Chairman: That may need to be another subsection.

Ms. Baldwin: I have a question. I understood Mr. Cooke's instructions and was prepared to draft a motion for him. I did not hear anything from him about notifying the physician, so I have to be clear on my instructions before I can carry them out.

Mr. Chairman: We are dealing with two things. One is the whole question of the patient knowing and the other is whether the physician should know. These can be put either into one subsection or into separate subsections. What is your election on that?

Miss Stephenson: You suggested separate subsections.

Mr. D. S. Cooke: I would prefer that the physician not be included for a very practical reason: I would be afraid that when that pharmacist cannot reach doctors or doctors feel they are getting bothered by these phone calls, we may get a lot of "no substitutions."

Mr. Chairman: Let us deal with them separately. I suggest you have a couple of subsections. One will be about the patient's right to know, if I can put it that way, and the other will be about the physician's right to know. Then we can deal with those two separately as we move along. If there is a difference of opinion, that will show itself in a vote. Okay?

Now we are dealing with subsection 2(3a), which Mr. Ward has moved with its clauses 2(3a)(a), 2(3a)(b) and 2(3a)(c). Is there further discussion on these matters to do with the less expensive products and so on?

Mr. Jackson: Are we dealing with the subsequently amended version underlined at the top of page 6 of Mr. Nigro's document or are we dealing with the original?

Is it this one or the one that is underlined? I understand the underlining to be subsequent last-minute changes made at that time.

Mr. Chairman: We are dealing with the subsequent one.

Mr. Jackson: Is it the right-hand one or the left-hand one?

Mr. Chairman: Why do we not deal with these by subsection? I will read them out and then you will know. The proposed amendment as I see it is the one in the centre column on page 6.

Mr. Jackson: Thank you. That is all I wanted to know.

Mr. Chairman: Am I correct, Mr. Ward? Is that the wording of the one you read in from the amendment sheet?

Mr. Jackson: You have two to choose from.

Mr. Chairman: It is the centre one. Then we go back to clauses 2(3a)(b) and (c) in the first column, which are also new.

Miss Stephenson: Could I ask question on that? Are we really talking about the inventory of the dispenser? The dispenser was defined specifically to ensure the dispenser might not be the operator of the pharmacy. It is the inventory of the pharmacy that is meant in this, is it not?

Mr. Chairman: That really does make some sense. Are we talking about the dispenser's inventory or are we talking about an operator's inventory?

Mr. Bernstein: The dispenser might be a physician. I do not know whether physicians carry inventory.

Mr. Chairman: We do not have a definition of "dispenser," do we? Do we have it again?

Mr. Bernstein: Yes.

Mr. Chairman: I guess that is the only thing, Dr. Stephenson. Instead of our other definition, which is "operator of a pharmacy," it could apply to one of the dispensing physicians.

Miss Stephenson: Oh, that is easy, because dispensing physicians usually carry one product in each group and that is it. They do not have inventories, except of various products that are not interchangeable.

Surely we are not really suggesting this would apply to them.

Mr. Chairman: Do you have a problem with with this if it is changed, Mr. Bernstein? Is this a friendly amendment?

5:50 p.m.

Mr. Bernstein: My only observation is that while the phrase "dispenser's inventory" may not, very strictly read, precisely cover the situation, I find it difficult to imagine that anybody would be confused about what the phrase means. If we are talking about an employee in a pharmacy, I believe that phrase would be read as being the inventory of the pharmacy available to the dispenser.

Mr. Chairman: We have already defined "operator of a pharmacy."

Miss Stephenson: Surely it would be the operator of a pharmacy.

Mr. Jackson: I have one question. May I ask Mr. Ward why he has amended the original? What was the rationale for amending the original?

Mr. Ward: No, you may not.

Mr. Jackson: You may choose not to give me an answer.

Mr. Ward: This is on the dispenser's inventory?

Mr. Jackson: Yes.

Mr. Ward: I am talking to the people who drafted it.

Mr. Chairman: Mr. Bernstein is a helpful--

Mr. Bernstein: Yes, Mr. Ward was explaining it to me just the other day.

Mr. Ward: That shows you are crossing the road.

Mr. Bernstein: He thought that the phrase in the original, "the amount that would have been charged for supplying the least expensive product," might be confusing to the people to whom it applied, particularly that phrase "least expensive product," whereas the phrase "least amount that would have been charged for supplying a product" was much clearer. He convinced me, I might add.

Mr. Ward: You took the words right out of my mouth.

Mr. Chairman: It is clear that he swung you over, Mr. Bernstein.

Mr. Jackson: I think the expression "least expensive product" may be offensive, but it is far more clear that that is the intention. Therefore, I have difficulty using language which is a little more confusing. If that is the intention, to supply the least expensive product, the bill should say that. To state that it not be more than the least amount that would have been charged is a funny play on words. My political cynicism really should not take over, but I am sure it has come to the attention of a few members of this committee that this is the intention. If you are going to say it, say it. We are here to draft a bill that is very understandable.

Mr. Chairman: Mr. Bernstein would like to explain why he was swung over.

Mr. Bernstein: Mr. Ward further told me that the phrase "least expensive product" might be ambiguous because it might mean least expensive in so far as the charge by the pharmacy is concerned or it might be least expensive in so far as the amount prescribed in the regulations is concerned. As long as the pharmacy was not going to charge any more for the product actually dispensed than for any other interchangeable product, then that was what he thought would justify not requiring the dispenser to inform the customer. That is why he used the phrase "least amount that would have been charged for supplying a product."

Mr. Chairman: The workings of a Byzantine mind. There is no doubt about that.

Mr. Bernstein: It was very impressive, I thought.

Mr. Jackson: I find the amended amendment is far more unclear than was the original amendment in the bill.

Mr. Chairman: If the consensus is that we defeat the present one, we could easily move the other one as a replacement for it. Is there any further discussion of clause 3a(a)?

Seeing none, all those in favour of clause 3a(a), please indicate.

Those opposed?

The motion is carried, six to four.

Clause 3a(b) reads: "Claim for a payment will be submitted to the Minister of Health under section 5 of the Ontario Drug Benefit Act, 1986, in respect to the supplying of the product or." That is straightforward. That was part of his amendment. I am taking them individually.

Seeing none, all those in favour of clause 3a(b), please indicate.

Carried.

Clause 3a(c) reads: "The product is being supplied pursuant to a repeat of the prescription."

Any discussion?

Miss Stephenson: Does that mean whenever a prescription is repeated, there will be no substitution, no notification and no question about the fact that the price does not make any difference?

Mr. Chairman: I do not think it means that. Who would like to explain?

Hon. Mr. Elston: It just says that when a prescription is repeated, once having advised the patient of the essence of the substitution, interchangeability and price verification, it does not have to be repeated each time the prescription is handed in.

Mr. Jackson: I have a question for the minister. Would that include, for example, changes in the formulary where the interchangeable prices would change in terms of their cost?

Hon. Mr. Elston: This deals with the question of interchangeability, not with the formulary. This is in the cash market and third parties.

Mr. Jackson: Fair ball.

Mr. Chairman: Is there any further discussion on clause 3a(c)?

It was Dr. Stephenson's question so I want to make sure I am not rushing past something.

Dr. Stephenson, I hate to interrupt you just now, but--

Miss Stephenson: That is all right.

Mr. Chairman: All those in favour of clause 3a(c), please indicate.

Clause 3a(c) carries. No amendment, so it carries.

Mr. Ward moves that section 2 of the bill be amended by adding the following subsection:

"3b. If a prescription directs the dispensing of a product that is not an interchangeable product and there is an interchangeable product that contains a drug or drugs in the same amounts of the same active ingredients in the same dosage form as the product prescribed, the dispenser may dispense the interchangeable product."

This is just enabling, I presume, "may dispense." Is there any full explanation required?

Dr. Dyer: This section allows a pharmacist to dispense an interchangeable product from a list for a product containing the same amount of drugs in the same dosage form not on the list. It is interchanging into the approved list from a product that may not be listed. It is intended to improve the quality of the products dispensed or make that possible.

Mr. Chairman: Is that understood, Mr. Jackson?

Mr. Jackson: I am confused. He is saying that it is only for those contained on the list or for those not on the list of approved drugs for interchangeable purposes?

Dr. Dyer: This applies only to those products containing the same drug, the same active ingredient in the same dosage form, those drugs not on an interchangeable list as yet. If that prescription is received, the pharmacist can dispense an interchangeable drug in its place.

The simple way to look at it is that a pharmacist can interchange into the approved list from a whole range of products that may be available.

6 p.m.

Mr. Jackson: I was not confused before Dr. Dyer introduced this notion of approved list and unapproved list. Now I am concerned about what is implied. What are these lists then? Let us start with understanding what the lists are. You have a whole list of interchangeable drugs from which he can choose that are not on the approved list.

Dr. Dyer: By the word "list," I mean those products that may be listed by the United States Food and Drug Administration as available in Canada. From that list there are a great many available that could be purchased, manufactured around the world, for example five-milligram diazepams. Only those drugs that have met the drug quality and therapeutic conditions as being interchangeable are on an interchangeable list.

The Drug Quality and Therapeutics Committee reviews all the manufacturing procedures, the bioavailability studies, etc., and makes a recommendation as to which drugs are interchangeable with the originators, diazepam or Valium. Only from that list can the selection of interchangeable drugs be made.

That does not mean to say there are not other diazepams available in Canada. There are. For one reason or another, they have not been classed as interchangeable. They are licensed and sold in Canada, but they are not classed as interchangeable by the Drug Quality and Therapeutics Committee, perhaps because they have not provided comparative bioavailability studies.

Miss Stephenson: Surely you are not suggesting that after having determined the route you will pursue in terms of interchangeability has not been met, you will allow other drugs to be designated as interchangeable when they have not been so designated?

Dr. Dyer: That is not what I said. Those drugs that have passed all the requirements as being interchangeable are on an interchangeable list.

Miss Stephenson: Right.

Dr. Dyer: There are other drugs--

Miss Stephenson: That are not on that list.

Dr. Dyer: There are other drugs on the market licensed for sale in Canada that may contain ostensibly the same amount of active ingredient in the same dosage form. They are still on the market. For one reason or another, they have not passed the qualifications required to be listed as interchangeable. If one of those drugs is prescribed, the pharmacist can select one of the interchangeable drugs in its place.

Mr. Leluk: Why are they not on the list?

Dr. Dyer: They have not qualified as interchangeable.

Mr. Jackson: Why have they not qualified?

Mr. Chairman: I think the difficulty committee members are having--and I may be wrong in this--is that if they are not interchangeable, how is the replacement interchangeable, if I can put it that way, just because it happens to be on the list?

Miss Stephenson: Surely then it should read, "If a prescription directs the dispensing of a product that is not designated as an interchangeable product." You have already defined "designation," and there are designated and interchangeable products, but it is that designation that is important.

Hon. Mr. Elston: The definition of interchangeable products says, "...and designated as interchangeable," if you read your definition.

Mr. Jackson: However, it says, "There is a nondesignated interchangeable product that contains a drug or drugs..." etc. After the explanation, for the paragraph to be meaningful, we have to build into it the distinction between what is on and what is off a list. I do not think we are out of line in asking that we at least have the clause say what it is the deputy minister just explained was going to happen.

Miss Stephenson: It is my understanding he is saying that from the list of interchangeable products, which is available to pharmacists, they may substitute for a drug that has not been designated as an interchangeable product.

Mr. Jackson: That is what I understood him to say. If that is what he is saying, I would like it to be reflected in the legislation.

Mr. Chairman: If you look at the definition of "interchangeable product" under section 1, it indicates it is one that is designated as on a list, etc. All you have here is a difference between something that is not an interchangeable product and something that is. It should be clear for that purpose.

Mr. D. S. Cooke: I understand now what Dr. Dyer has been saying but I would like to have your question answered. The chairman asked if it is not designated as interchangeable and it has not been put on the list, how can you assume that what is on the list is interchangeable and therefore can be substituted?

Mr. Leluk: I am starting to get the picture.

Dr. Dyer: We may have a diazepam that is five milligrams in a tablet form. That diazepam would have its own name. This goes on all the time and is currently the practice in Ontario. If that drug cannot meet the stringent qualifications to be classified interchangeable--and that requires not only bioavailability, but chemical purity and quality--we are not saying it is interchangeable. We are saying that the products on the list are of assured quality, and interchangeable with the originators' products.

They are therefore providing the same clinical effectiveness as the originators' products. This says that a pharmacist, in filling a prescription, should be able to select a product that has met those standards.

Mr. D. S. Cooke: This does not make a heck of a lot of sense.

Mr. Reycraft: Would ibuprofen not be another good example of when one might want to use this? If a physician prescribes ibuprofen, could the pharmacist not dispense an interchangeable drug?

Dr. Dyer: That is exactly right. If the prescription was for apo-ibuprofen, which is not now interchangeable, it would have to be written for the brand name in order to make other ibuprofens on the list available. If it was simply for ibuprofen, the pharmacist could select from the list. That is in another section.

Mr. D. S. Cooke: I gather that you are happy with this amendment as well, since it makes sense to Dr. Dyer, and is the current situation in Ontario.

Mr. Chairman: We are getting a little bogged down here, but we should get through this section. We are doing quite well today. If we maintain this speed, we may even be able to meet our goals of starting Bill 30 on Thursday. Can we deal with subsection 2(3b) again?

Miss Stephenson: I have difficulty with this.

Mr. Chairman: With the amendment or--

Mr. Jackson: I propose an amendment that the word "designated" be placed in front of the first "interchangeable," and the word "nondesignated" in front of the second "interchangeable."

Miss Stephenson: No. That is the other way around.

Mr. Jackson: All right, the other way around.

Miss Stephenson: If a prescription directs the dispensing of a product that is not a designated interchangeable, and there is an interchangeable product that contains the drug or drugs, you do not need the second one at all. The minister says that we do not need the first one, either, but if you do not put the first one in, I suggest that you are going to have to write the professional layman's guide to this act.

Interjections.

Mr. Chairman: Order. Legal counsel is having difficulty with us, and maybe we can find out why.

Ms. Baldwin: Since "interchangeable product" is defined as that which is designated, it is not going to make sense to refer to a nondesignated product that is designated.

Miss Stephenson: Then do not use "interchangeable."

Ms. Baldwin: When we get to the regulation-making section, it is proposed to be specified that a product cannot be designated as interchangeable unless it contains a drug or drugs in the same amounts of the same active ingredients in the same dosage form.

The purpose of this subsection is to say that if you have a product that is not designated but contains the same amounts of the same active ingredients in the same dosage form as an interchangeable product, you can use the interchangeable. Once the regulation-making authority is put in, which specifies that you have to have the same amounts of the same active ingredients in the same dosage form, it will all flow smoothly and not present a problem.

6:10 p.m.

Miss Stephenson: There is the repetition of the word "interchangeable" being used for a drug which is not at this point on the list as being interchangeable. I would, therefore, feel more comfortable if it read, "If a prescription directs the dispensing of a product that is not designated interchangeable and there is an interchangeable product that contains the drug or drugs," etc.

Ms. Baldwin: When you say "and there is an interchangeable product," you mean one that--

Miss Stephenson: --has been designated interchangeable, and this one has not been designated interchangeable. It is that use of "interchangeable" before "product" in both cases that may become confusing.

Mr. Chairman: Is this a friendly suggestion?

Miss Stephenson: It was meant to be a friendly suggestion.

Mr. Chairman: I think we are getting bogged down in something which it is really not necessary to be bogged down in.

Mr. Jackson: It is meant to be friendly.

Mr. Chairman: I understand, but the word "friendly" describes an amendment that is acceptable. That is all I am saying. If it is acceptable to the mover that it is friendly, we do not need a motion here. If it is not accepted as friendly, the amendment either has to be moved as a subamendment, which we vote on first, or--

Mr. Jackson: Legal counsel was about to give us her impressions of Dr. Stephenson's question, which was how to achieve some distinction to three references to "interchangeable product" in one paragraph when the deputy minister has given us the distinction and yet it does not jump out at us as abundantly clear in this wording? What I am trying to achieve here is to create in the amendment the distinction the minister had to give us verbally, which was not readily apparent.

Mr. Chairman: I understand what you are after.

Mr. Jackson: May I ask legal counsel who was on the verge of advising us in response to Dr. Stephenson's question?

Ms. Baldwin: May I ask the committee's indulgence for 30 seconds?

Mr. Chairman: Certainly. All I am saying is you will have to move it as an amendment because, at this point, it is not friendly.

Mr. Jackson: I am doing that, but I need help.

Mr. Chairman: I wonder if we should take a little break here. We have two new potential amendments. We talked about right-to-know amendments that will be coming up. If we could try to get through these things before we break tonight, we will have done fairly well.

Dr. Dyer: The confusion rests in the use of the word "interchangeable" which occurs several times.

Mr. Chairman: Legal counsel may have a solution.

Ms. Baldwin: I am prepared to answer Mr. Jackson's question now. I heard the suggestion earlier that the words "designated as" could be put after the word "not" in the second line. If that were done, it would not change the meaning of the subsection. If the committee felt that makes it easier to understand, I have no objections at all.

Mr. Chairman: Now it would be, "If a prescription directs the dispensing of a product that is not designated as an interchangeable product and there is an interchangeable product that contains a drug or drugs in the same amount," etc. Is that what you want? Friendly?

Mr. Ward: Yes.

Miss Stephenson: Yes. At least you know what you are talking about.

Mr. Chairman: I only see the word twice.

Miss Stephenson: The third is down at the very bottom.

Mr. Chairman: That is because I never read to the end.

All those in favour of subsection 3b, please indicate. All those opposed? The motion is carried.

Mr. Cooke moves that section 2 of the bill be amended by adding the following subsection 3c:

"A dispenser shall not dispense a product other than the specific interchangeable product referred to in a prescription as provided in subsection (1) without the consent of the person for whom the product was prescribed or the person presenting the prescription."

This amendment deals with the patient's right to know, that is to say, as I understand it, there shall be no interchanges made without the knowledge of the person who has either been prescribed for or is presenting the prescription on behalf of that person.

Mr. D. S. Cooke: We are trying to get consumer information. That is what Bill 55 is supposed to be about. I do not want to present an amendment that destroys the basis of the bill, which is interchangeability; however, I do think consumers should have the right to know they are having an interchangeable product substituted. If the minister uses different wording--perhaps "inform" instead of "consent"--that is fine.

Mr. Chairman: We could have "without the knowledge," if you want.

Mr. Leluk: What do we do in the case of an agent acting on behalf of the patient, whether a 12-year-old child on behalf of its parents or a cab driver taking the prescription to the pharmacy because the person, a senior citizen or a handicapped person, cannot make it alone or cannot get there? How do we get a consent?

Mr. D. S. Cooke: What are you suggesting, Mr. Leluk?

Mr. Leluk: This is the problem. It is not always the patient who goes to the pharmacy, so who provides consent?

Mr. D. S. Cooke: Do you have a suggestion? The problem is either

destroying interchangeability and so driving up the costs or consumer information and consent.

Mr. Ward: One of the difficulties is consumer awareness. The subsections we were proposing, subsections 1, 2, 3 and 3b that apply to interchangeability, do not apply if the pharmacist receives direction, even verbally, that there be no substitution. As I see it, that can come from either the client or--

Mr. Leluk: How does he get that from a 12-year-old?

Mr. Ward: It would be the same problem either way, Nick. It is better if the customer says there is no substition or the physician says there is no substitution. Then you have that protection. Your suggestion assumes the consumer has knowledge and information he is unlikely to have.

Miss Stephenson: Within this act, we require the consumer to be provided with that information. That is the gist of David's motion. This act is supposed to be on the basis of the informed consumer, I thought.

Mr. D. S. Cooke: What Mr. Ward is saying is legitimate. I do not know whether I even want to vote on this amendment. Price is one thing in terms of dispensing fees and so forth. When I had Tagamet a number of months ago, I do not know whether I got cimetidine. All I know is I got a prescription for my stomach and went to the drugstore to pick it up. I did not know whether it was a generic.

I want to make sure that we, as a committee, are not going to destroy interchangeability at the expense of some perceived consumer knowledge. If it is possible, Mr. Chairman, I want to table that amendment and deal with it tomorrow.

Mr. Chairman: Certainly.

Mr. D. S. Cooke: I want to be able to think about the implications before we vote on it.

Mr. Chairman: The motion is tabled and nondebatable.

Miss Stephenson: Are we leaving that section open?

Mr. Chairman: Yes, we are not finished with the section anyway.

6:20 p.m.

Mr. Chairman: Miss Stephenson moves that section 2 of the bill be amended by adding the following subsection:

"(3c) A dispenser who dispenses an interchangeable product as provided under subsection (1) or (2) shall inform the person who issued the prescription of what product was dispensed."

Miss Stephenson: I think it should be "what substitution was effected" rather than "what product was dispensed."

I am not suggesting, as I heard someone say behind me, the pharmacist has to call the physician every time a substitution is made. If the pharmacist

has a number of prescriptions from one physician, the physician's secretary or office can be called at some point in the day and the list of substitutions given all at once rather than calling about each one. It seems to me there is some responsibility on the part of the pharmacist to inform the physician that substitution has occurred.

Hon. Mr. Elston: It is not a preceding condition.

Miss Stephenson: No, I am not saying it is.

Interjection: The condition is subsequent.

Miss Stephenson: It is subsequent. It does not precede the act at all. The consent of the consumer is the important matter preceding the act of substitution. It is important that the physician be notified if that substitution has occurred.

Mr. Chairman: Do you want to change the final words to read "the prescription of the substitution effected"?

Miss Stephenson: Yes. Or "carried out" or whatever; simply stated in a way suitable to legislative counsel.

Mr. Chairman: Does Dr. Dyer say we cannot use the word "substitution"?

Miss Stephenson: "The product actually dispensed"?

Ms. Baldwin: I put it in that way, Dr. Stephenson, because the doctor would probably know what he or she had prescribed and would want to know which product had been dispensed in its place.

Miss Stephenson: Yes. You are right.

Mr. Chairman: So the wording would now be as follows:

"(3c) A dispenser who dispenses an interchangeable product as provided under subsection (1) or (2) shall inform the person who issued the prescription of what product was dispensed."

Mr. Reycraft: I would like to ask Dr. Stephenson a question. If a physician deems it important that no interchangeable be dispensed, he has the opportunity to write "no substitution" on the prescription. If he does not feel it is important, what is the benefit of advising him of it after the fact?

Miss Stephenson: One of the important and relatively new activities being carried out at present, Mr. Reycraft, is the adverse drug reaction examination. Information on the drug prescribed for the patient is required of the physician.

When the patient comes in with a reaction, the physician immediately says, "This is what I prescribed for the patient." He may not have written that generically but in a brand name. It may have been substituted, and when he completes the form that goes to the central collection area for adverse drug reactions, it may be listed not as the generic name of the drug but as the brand name.

Information that is as accurate and precise as possible must be

available to the physician so he or she can provide it to the adverse drug reaction committee immediately, rather than going through the long procedure that is sometimes necessary of going back to the pharmacy to find out what the substitution was.

Mr. D. S. Cooke: Is Dr. Stephenson saying that if an adverse reaction occurred, the doctor would automatically assume, even though he or she did not write "no substitution," that the brand prescribed was dispensed?

Miss Stephenson: Yes. Automatically.

Mr. D. S. Cooke: Would the doctor not feel it was his or her responsibility to check with the pharmacist?

Miss Stephenson: The doctor has written out the name of the drug which is prescribed. Doctors are not used to writing "no substitution." There is no doubt about that.

The case which comes to mind most readily is adverse reaction to one of the enteric-coated aspirins. In all instances, and there were 10 reported, the brand name of the most commonly used enteric-coated aspirin was what was on the chart, and the doctors all assumed that was what was dispensed to the patient. In all 10 cases, it was discovered that a substitution had been made. The adverse drug reaction committee found that was somewhat troublesome in attempting to come to grips with the problem it was trying to resolve.

Mr. Jackson: That was my point. We received a specific deputation, and Dr. Stephenson gave the case in point during the hearings. That was the whole nub of this issue: making sure the doctors' records were accurate and parallel to what was actually dispensed. That is all we intend to achieve by this.

It is a doctor who actually talks to the patient about his drug reaction; not in all cases is it the pharmacist who is consulted. We heard from the pharmacists that when such cases occur, they immediately consult the doctor; they do not take it upon themselves to start dispensing different drugs. In a lot of cases, the patient goes directly to the doctor to say, "I am having this kind of reaction."

Dr. Psutka: Before coming to the government I used to practise.

Mr. Chairman: Now what do you do?

Dr. Psutka: I wonder sometimes. What I am hearing here is that every time interchangeability takes place, a phone call to a doctor will also take place.

Miss Stephenson: No. I just said that would not happen.

Dr. Psutka: I would like to clarify that because if so, my point is that health care delivery is a team effort involving pharmacists and physicians. If there is an adverse reaction, then the adverse reaction should be followed up quickly, and that should involve the pharmacist. There should be a dialogue between the physician and pharmacist at that time to determine what the drug is and what the side-effects are.

Most of the time, up-to-date drug information is available through the pharmacists and their drug reporting and information centre, which is often an

asset to the physicians in practice across Ontario. I am trying to promote the team relationship rather than simple paper reporting.

Miss Stephenson: That is what I am trying to promote as well. The team effort ensures that when substitution occurs at the professional decision of the pharmacist and the request of the patient, the physician is at least provided the courtesy of receiving that information. That may be some time during the day the prescription is issued or the next day. It may be done in a list provided to the physician, which is not necessarily going to be very time-consuming or extremely wearing for the pharmacist. It is neither at the time of prescription nor preceding the substitution, but simply a reporting of the fact that it occurs.

Mr. Chairman: Is there further discussion?

The committee divided on Miss Stephenson's motion on subsection 2(3c), which was negatived on the following vote:

Ayes

Baetz, Jackson, Leluk, Stephenson.

Nays

Cooke, D. S., Miller, G. I., Offer, Reycraft, Ward.

Ayes 4; nays 5.

Mr. Chairman: Seeing the clock, we will not get any more done tonight. It has been a bad start, but we will advise the groups on Bill 30 that the probability is still that we will start on Monday rather than Thursday. We will adjourn until tomorrow at approximately 3:30 p.m.

The committee adjourned at 6:29 p.m.

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

ONTARIO DRUG BENEFIT ACT
PRESCRIPTION DRUG COST REGULATION ACT

TUESDAY, MAY 6, 1986

STANDING COMMITTEE ON SOCIAL DEVELOPMENT
CHAIRMAN: Jonnston, R. F. (Scarborough West NDP)
VICE-CHAIRMAN: Reville, D. (Riverdale NDP)
Allen, R. (Hamilton West NDP)
Andrewes, P. W. (Lincoln PC)
Baetz, R. C. (Ottawa West PC)
Davis, W. C. (Scarborough Centre PC)
Jackson, C. (Burlington South PC)
Miller, G. I. (Haldimand-Norfolk L)
Offer, S. (Mississauga North L)
Reycraft, D. R. (Middlesex L)
Ward, C. C. (Wentworth North L)

Substitutions:
Cooke, D. S. (Windsor-Riverside NDP) for Mr. Allen
Leluk, N. G. (York West PC) for Mr. Davis
McGuigan, J. F. (Kent-Elgin L) for Mr. Offer
Stephenson, B. M. (York Mills PC) for Mr. Andrewes

Clerk: Carrozza, F.

Staff:
Baldwin, E., Legislative Counsel
Nigro, A., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Health:
Elston, Hon. M. J., Minister of Health (Huron-Bruce L)
Bernstein, D., Director, Legal Services Branch
Dyer, Dr. A. E., Deputy Minister
Psutka, Dr. D. A., Assistant Deputy Minister, Emergency Services, Laboratories and Drug Programs

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, May 6, 1986

The committee met at 3:45 p.m. in room 151.

ONTARIO DRUG BENEFIT ACT
PRESCRIPTION DRUG COST REGULATION ACT
(continued)

Consideration of Bill 54, An Act to Authorize and Regulate the Payment by the Minister to Specified Persons on Behalf of Specified Classes of Persons for the Dispensing of Specified Drugs; and of Bill 55, An Act to provide for the Protection of the Public in respect of the Cost of Certain Prescription Drugs.

Mr. Chairman: I call the meeting to order. We are considering Bill 55. Mr. Leluk wanted to raise a matter--

Mr. Leluk: --of urgent public importance. I had a request from a number of our regular attendees at the meetings who represent various interest groups to see if it would be possible to have a photograph taken with members of our committee for posterity's sake or to put on their dart boards, I do not know which it is.

Mr. Chairman: Some people treasure a rogues' gallery.

Mr. Leluk: I would like to leave that thought with you and if you think members of the committee want to do that, perhaps before the committee comes together on Thursday we could have some photos.

Mr. Chairman: Sure. The easist time would probably be Thursday before we call things to order. Whoever is bringing the brownie, be prepared. It will probably be a little after 3:30 p.m. I will tell the other committee members who are not here, if that is all right.

On subsection 2(4):

Mr. Chairman: Subsection 2(3) is completed. We are now moving to subsection 4, which reads:

"(4) Subsections 1, 2 and 3 do not apply if the person issuing the prescription directs in the prescription that there will be no substitutions."

Mr. Ward moves that subsection 2(4) of the bill be struck and the following substituted therefor:

"(4) Subsections 1, 2, 3 and 3b do not apply to a prescription that includes:

"(a) in the case of a written prescription the handwritten words 'no sub' or 'no substitution'; or

"(b) In any other case a direction recorded by the dispenser that there be no substitution."

That is moved by Mr. Ward to give us more precise wording in two instances.

Miss Stephenson: What is "a direction recorded"? Does that mean a direction has been given and therefore written by the receiver?

Mr. Ward: So I understand.

Miss Stephenson: There is nothing else required?

Mr. Ward: No.

3:50 p. m.

Mr. Chairman: Is there further discussion of the 'no sub' provision?

Motion agreed to.

Subsection 2(4), as amended, agreed to.

On section 3:

Mr. Chairman: "(3) If a prescription directs the dispensing of a drug for which there are interchangeable products without identifying a specific product name or manufacturer, the dispenser shall dispense an interchangeable product of that drug."

I do not see any amendments. That was the original wording in the act before we had the public hearings.

Miss Stephenson: I presume that means that if the prescription is written for the generic in the generic form that indeed the generic interchangeable will be prescribed.

Mr. Chairman: Exactly. I think that is what that means. Is that correct, Mr. Bernstein? This is section 3 and it is basically saying that when you are using a generic term for something rather than the specific drug name--

Miss Stephenson: If you write it generically, that is what you anticipate is going to happen.

Mr. Bernstein: Exactly.

Mr. Chairman: Is there further discussion?

Motion agreed to.

On subsection 4(1):

Mr. Chairman: "4(1) Every operator of a pharmacy shall set a single maximum dispensing fee to be charged in respect of dispensing interchangeable products and shall file a statement with the Ontario College of Pharmacists setting out that fee."

I am reading the bill at this point. Is that different from what we brought through?

Mr. Ward: Yes it is.

Mr. Chairman: Why do you not read that amendment in?

Mr. Ward moves that subsection 4(1) of the act be amended by striking out the words "maximum dispensing fee to be charged" in the second line and substituting in lieu thereof: "specific amount as a usual and customary dispensing fee" and by striking out "the Ontario College of Pharmacists" in the fourth line.

That would now read as it shows on page 8 of Mr. Nigro's document in the left-hand column. Is there any discussion of this?

Motion agreed to.

Subsection 4(1), as amended, agreed to.

On clause 4(1)(a):

Mr. Ward: Clauses 1(a) and (b).

Mr. Chairman: Oh, sorry. I think I will work from Mr. Nigro's document. You can just catch me when I miss something that has not been amended or has been amended and I do not know that.

Mr. Ward moves that clause 4(1)(a) be amended as follows:

"4(1)(a) An operator of a pharmacy may change the usual and customary dispensing fee by filing a statement with the registrar setting out the new fee."

Is there any discussion?

Motion agreed to.

On clause 4(1)(b):

Mr. Chairman: Mr. Ward moves that clause 4(1)(b) be amended as follows:

"The usual and customary dispensing fee becomes effective on the date the statement is received by the registrar."

Is there any discussion?

Motion agreed to.

On subsection 4(2):

Mr. Chairman: Mr. Ward moves that subsection 4(2) be amended to read as follows:

"4(2) Every operator of a pharmacy shall post in the pharmacy in the manner prescribed by the regulations a notice containing the usual and customary dispensing fee filed with the registrar and any other information prescribed by the regulations respecting the charge for interchangeable products."

Is that the same as it was? No, moved by Mr. Ward, subsection 4(2). There are no amendments I have seen on this.

Mr. Ward: This is the one that has been read as an amendment. It is from January.

Mr. Chairman: All those in favour of subsection 4(2), as amended, please indicate.

Miss Stephenson: I just want to be sure that the regulation regarding this is one of the regulations that will belong in the area of responsibility of the Ontario College of Pharmacists, not the ministry. Is that so?

Dr. Dyer: Yes.

Miss Stephenson: The regulatory reference will note that?

Dr. Dyer: Yes.

Mr. Chairman: The answer is yes. This is one of the ones over which the registrar has some control.

Miss Stephenson: He has complete control as far as regulations are concerned.

Mr. Chairman: All those in favour of subsection 4(2), as amended, please indicate. The motion is carried.

Will section 4, as amended, carry? All those in favour? Carried.

Section 4, as amended, agreed to.

On section 5:

Mr. Chairman: "5. No person shall charge more than the maximum amount provided for by the regulations for supplying an interchangeable product pursuant to a prescription."

Do you have an amendment, Mr. Cooke?

Mr. D. S. Cooke moves that section 5 of the bill be struck out and the following substituted therefor:

"5(1) In this section, 'best available price,' in respect of a drug product from which a prescription is dispensed, means the lowest price at which the manufacturer of that product supplies to purchasers in Ontario the particular dosage, form and strength of the product, which price shall be prescribed by the regulations.

"(2) The best available price for supplying a drug product pursuant to a prescription shall be,

"(a) where the drug product is not an interchangeable product, the best available price for that product;

"(b) where the person issuing the prescription has specified that there shall be no substitutions, the best available price of the product prescribed;

"(c) where the person presenting the prescription has requested the dispensing of a particular interchangeable product, the best available price of that product; and

"(d) in all other cases, the best available price that is the lowest among the products in the person's inventory that are interchangeable with the product supplied.

"(3) No person shall charge more for supplying a drug product pursuant to a prescription than the sum of,

"(a) the base price determined under subsection 2;

"(b) the percentage of that price, not less than 10 per cent, not greater than 20 per cent, that is prescribed by the regulations; and

"(c) that person's usual and customary dispensing fee."

4 p.m.

Mr. D. S. Cooke: Subsection 5(1) is an amendment that has been filed with the committee for quite some time.

I do not think we need to go into details. We have had lengthy discussions about best available price. The difference between this and Bill 54 is that we have provided for the listing of each drug product. If we just listed the lowest prices of all the interchangeables, it would mean that if there were a no-substitution or specific drug requested by the customer, no one would be able to determine the best available price for that drug product.

We envisage that the formulary under this section will be a listing of each price for each drug product, and it will be the best available price for each of those drug products.

I assume we will have to have some amendments to bring it in line with Bill 54 wherever practical, such as the per unit and so forth.

Mr. Ward: There were two points of consistency with Bill 54, one being the "per unit" as previously indicated. I suggest we incorporate the wording from Bill 54.

Second, we were using Canada as the market rather than Ontario, and I suggest that too be incorporated, using Canada as the market and the "per unit."

Mr. Chairman: I gather the reference to Ontario was a friendly amendment. Would it now be to purchase in Canada? No, It would not be.

Miss Stephenson: Would it be appropriate to parallel that section in Bill 54 as carefully as we possibly can, in order to ensure--who has the copy of the appropriate section in Bill 54? I am looking for it and cannot find it.

Interjection.

Miss Stephenson: Is it 6? No, that is the determination of dispensing fee.

Interjections.

Miss Stephenson: It is subsection 10a(1).

Mr. Chairman: We are looking for the wording similar to that passed

in Bill 54 for best available price where we talked about capsules, milligrams, etc., and also the reference to "Canada" rather than--

Miss Stephenson: It is clause 11(2)(a):

"In determining the amounts payable by the minister under subsections, the Lieutenant Governor in Council shall ascertain and prescribe the best available price...."

Then clauses 11(2)(b) and 11(2)(c). Clause 11(2)(b) does not follow as far as this is concerned, but 11(2)(c) does.

Mr. Chairman: Just to keep it in order, we have before us Mr. Cooke's motion. We probably have to look at each subsection to see how we can put the wording to it, which may require an amendment to replace each section.

Miss Stephenson: Can we propose an amendment to Mr. D. S. Cooke's 5(1), which says:

"In this section, 'best available price' for a drug in a particular dosage form and strength means the lowest amount calculated per gram, millilitre, capsule or other appropriate unit for which that drug in that dosage form and strength can be purchased in Canada for wholesale or retail sale in Ontario, and in calculating that amount, the Lieutenant Governor in Council shall deduct the value of any price reduction granted by the manufacturer, wholesaler or their representatives in the form of rebates, discounts, refunds, free goods or any other benefits of like nature."

Mr. Chairman: Dr. Stephenson moves that we replace 5(1) with the wording of clause 11(2)(c) in Bill 54. That is at the bottom of page 11.

Miss Stephenson: The amendment should be amended because it should say "....is the lowest price at which each manufacturer of that product supplies."

Mr. Chairman: That is the difficulty.

Hon. Mr. Elston: When we were drafting, or trying to make Bill 55 comply with Bill 54, we put together a package of amendments on sections 5 and 5a that I think was presented yesterday. I had some concern about them being consistent and I was not going to move those. However, perhaps they can be considered because sections 5 and 5a, in conjunction with amendments to subsections 12(5), 12(6) and 12(7) might do exactly what we have done under Bill 54. We had a general section and then went to the regulations to define what "best available price" was. Maybe we can take a look at that for a second. Take a look at subsections 12(5) and 12(6) as well and see whether that helps before we move too far away. I do not know whether it does. If it does not, that is fine.

Mr. Chairman: The suggestion by the minister is that we look at the potential amendment by Mr. Ward that was circulated yesterday on sections 5 and 5a, and then at subsections 12(5), (6) and (7), which were also distributed to us, and in perusing them see whether they meet the desired purpose.

Hon. Mr. Elston: If they do not, then we can--

Mr. Chairman: If people think they do not, then we can go back and do what we are trying to do by taking each clause of Mr. Cooke's. The easiest way might be to take a moment to read that through rather than to introduce it. If we have a consensus to try that approach, we can do it.

Mr. Bernstein: It is not just section 5 plus subsections 12(5), (6) and (7). It is sections 5 and 5a plus subsections 12(1) to 12(7). We have given out subsections 12(1) to (4). We have subsections 12(5) to (7) available if Mr. Cooke should want to move them, because they provide expressly and specifically for best available price plus prescribed amount. It is intended to be an exact parallel to Bill 54.

Mr. Chairman: I do not know whether you have had a chance to look at this, Mr. Cooke, but if you feel it is appropriate and does not offend the spirit of what you were trying to do, maybe you can withdraw your motion and have Mr. Ward's motion put forward. It is not complete. I just want to be sure before we go down that road that you think it is consistent enough.

Why do we not take five? I will get a cup of tea, and then nothing else can happen.

The committee recessed at 4:07 p.m.

4:14 p.m.

Mr. Chairman: Mr. Cooke moves that subsection 5(1) of the bill be struck out and the following substituted therefore:

"(1) In this section, 'best available price,' in respect of a particular manufacturer's drug product in a particular dosage form and strength for which a prescription is dispensed, means the lowest price, calculated per gram, millilitre, capsule or other appropriate unit, for which that product in that dosage form and strength can be purchased in Canada for wholesale or retail sale in Ontario, which price shall be prescribed by the regulations, and in calculating that price, the Lieutenant Governor in Council shall deduct the value of any price reduction granted by the manufacturer or wholesaler or their representatives in the form of rebates, discounts, refunds, free goods or any other benefits of a like nature."

Mr. Chairman: Moved by Mr. Cooke, this replaces subsection 5(1).

Miss Stephenson: May I please see that?

Mr. Chairman: We will do our best.

Interjection.

Miss Stephenson: That I have seen. That is not exactly the same as what Mr. Cooke just said.

Mr. D. S. Cooke: It is almost the same.

Mr. Chairman: If you look at clause 11(2)(c) in Bill 54--it is on page 11 of the compilation we ended up with--the major difference between this new subsection 5(1) and that subsection is that it speaks specifically to separate drug products rather than to all drug products.

Miss Stephenson: Is it not the best available price provided by each manufacturer for each of those products?

Ms. Baldwin: If you are talking about a particular product that would come from a particular manufacturer, I would not have thought it would be necessary to specify the manufacturer.

Mr. Chairman: Let me read it again. If you look at clause 11(2)(c) and if I read this one out, you will see what the differences are and you will also see, I think, that it is implicit in covering what you are suggesting on the wording:

"In this section, 'best available price,' in respect of a drug product in a particular dosage form or strength for which a prescription is dispensed, means the lowest price, calculated per gram, millilitre, capsule or other appropriate unit, for which that product in that dosage form and strength can be purchased in Canada for wholesale or retail sale in Ontario, which price"--and this is different--"shall be prescribed by the regulations, and in calculating that price, the Lieutenant Governor in Council shall deduct the value of any price reduction granted by the manufacturer or wholesaler or their representatives in the form of rebates, discounts, refunds, free goods or any other benefits of a like nature."

Mr. D. S. Cooke: The major difference between this and the proposal from the government is that we did not use the words "interchangeable products."

Miss Stephenson: I want to know what the purpose is. Since this does not deal with interchangeable products, does this mean the best available price has to apply?

Mr. D. S. Cooke: Yes, to every drug product.

4:20 p.m.

Miss Stephenson: For which a prescription is dispensed.

It was my understanding that we were attempting to ensure that the best available price would be available to each pharmacy in the province from each of the manufacturers for each of the drug products for which prescriptions may be written; and that best available price is the lowest price, calculated per gram, millilitre, capsule or other appropriate form in which that specific product of that manufacturer can be purchased in Canada for wholesale or retail sale in Ontario.

Mr. Chairman: Right.

Miss Stephenson: But this does not say that.

Mr. Chairman: I thought it was implicit in terms of this being for the specific product of a specific manufacturer.

Miss Stephenson: No. That is not what this says.

Interjection.

Miss Stephenson: No, it does not. It says nothing about interchangeable. As a result of the fact that it does not say anything about interchangeable and does not say anything about specific manufacturers, I do not know what it means. I guess it means the best available price is the price at which any one drug within that group can be purchased.

Mr. Leluk: Change "from" to "for."

Miss Stephenson: Yes. It is not "from which a prescription is dispensed."

Mr. Leluk: "For which a prescription is dispensed."

Mr. Chairman: It seems to me that the mover has the same intent Dr. Stephenson is speaking about. The question of whether the language meets the need is another matter.

Ms. Baldwin: There are two things I could do here. One is to change the "from" to "for," as you have asked. Another, if it would clarify this, is to say, "best available price in respect of a particular manufacturer's drug product in a particular dosage form and strength."

Miss Stephenson: Okay. That would help me.

Mr. Chairman: Everything else would flow from that. Is that a friendly amendment? I will read it again. Instead of saying, "In this section, 'best available price,' in respect of a drug product in a particular dosage form and strength," etc., it would now say, "In this section, 'best available price,' in respect of a particular manufacturer's drug product in a particular dosage form and strength from which a prescription is dispensed."

Miss Stephenson: "For which."

Mr. Chairman: "For which a prescription is dispensed." Would that be fine with you?

Mr. D. S. Cooke: Maybe legislative counsel can tell us what that does. That just clarifies?

Ms. Baldwin: It just clarifies. It does not change the meaning you were intending, Mr. Cooke.

Mr. Chairman: Shall I read it through again? Then you can decide whether you think it does.

Miss Stephenson: Yes.

Mr. Chairman: The amendment to section 5(1) now reads as follows:

"In this section, 'best available price,' in respect of a particular manufacturer's drug product in a particular dosage form and strength for which a prescription is dispensed, means the lowest price calculated per gram, millilitre, capsule or other appropriate unit, for which that product in that dosage form and strength can be purchased in Canada for wholesale or retail sale in Ontario, which price shall be prescribed by the regulations, and in calculating that price, the Lieutenant Governor in Council shall deduct the value of any price reduction granted by the manufacturer or wholesaler or their representatives in the form of rebates, discounts, refunds, free goods or any other benefits of a like nature."

Miss Stephenson: That does it. It ensures that what we are talking about is the best available price for each manufacturer's drug product within any group.

Mr. Chairman: Do you wish the vote taken at this point, Mr. Cooke?

Mr. D. S. Cooke: Sure.

Mr. Chairman: Are you sure?

Mr. D. S. Cooke: What do you mean? I understand what the intent is.

Mr. Chairman: Yes, I know that. I thought you might want it to pass.

Mr. D. S. Cooke: Ah.

Mr. Chairman: Is there further discussion?

Mr. Ward: I understand the amendment will keep this legislation consistent with Bill 54 and that is the intent. I want to reiterate that the government does not support the principle of best available price. We will support the amendment in terms of the consistency and under section 12 we will vote against best available price.

Mr. Chairman: Therefore, Mr. Cooke, you may be safe to move the amendment at this point. Is there no further debate on the amendment to 5(1), as read several times now? All those in favour, please indicate.

Motion agreed to.

Mr. Chairman: We now move to subsection 5(2). We have an amendment. Does it stay the same, Mr. Cooke? Does it meet your requirements?

Mr. D. S. Cooke: I do not see why there would be any change to that, since this is deliberately somewhat different than Bill 54.

Mr. Chairman: Is there any further discussion on Mr. Cooke's motion on subsection 5(2) which begins, "The base price for supplying a drug," etc.? What does the term "base price" mean? We have not seen it before.

Mr. D. S. Cooke: The base price is the best available price without the 10 to 20 per cent applied.

Miss Stephenson: We have no definition.

Ms. Baldwin: Subsection 2 is essentially the definition of base price, as used in subsection 3.

Mr. Chairman: Counsel is essentially saying that subsection 2 is the definition of base price and then how that is handled is under subsection 3.

Mr. D. S. Cooke: If you look at subsection 3, base price obviously makes sense.

Mr. Chairman: Is there any further discussion on subsection 5(2)?

Mr. Bernstein: Before the clauses or including the clauses?

Mr. Chairman: I am taking clauses 5(2)(a), (b), (c) and (d) together, unless I am told to do otherwise. Mr. Ward, do you wish to take them individually?

All those in favour of the amendment by Mr. Cooke to subsection 5(2), please indicate.

Motion agreed to.

Mr. Chairman: On subsection 5(3), there is lots of discussion but none of it on the record. I presume there is general agreement. All those in favour of subsection 5(3), please indicate. Those opposed?

Motion agreed to.

Shall section 5, as amended, carry? All those in favour? Opposed?

Section 5, as amended, agreed to.

On section 6:

4:30 p.m.

Mr. Chairman: "If an interchangeable product is dispensed in accordance with this act, no action or other proceeding lies or shall be instituted against the person who issued the prescription or the dispenser on the grounds that an interchangeable product other than the one prescribed was dispensed."

I think Mr. Ward has an amendment.

Mr. Ward moved that section 6 of the bill be amended by striking out "or the dispenser" in the third and fourth lines and inserting in lieu thereof "the dispenser or any person who is responsible in law for the acts of either of them."

Mr. Chairman: This is on page 11 of Mr. Nigro's document. The amendment inserts an additional group of words to add some sort of coverage for people who may not be conceived of at this point, one way or another, "or any person who is responsible in law for the acts of either of them." That refers to either of the two matters: dispensing and prescribing.

Miss Stephenson: This takes the minister and the deputy minister off the hook completely, because they are responsible for the administration of this act. The administration of this act ensures that this kind of substitution--interchangeability, or whatever you want to call it--will occur. You are not talking about pharmacists' secretaries and other people; this is a blanket removal of liability from anybody who has anything to do with this act, including this committee, I guess, by tenuous extension.

Mr. Chairman: It is always possible to put in a further amendment to mention the minister must be accountable.

Miss Stephenson: If you want to ensure the employees of physicians or pharmacists--the doctor's secretary or the pharmacist's clerk--are not liable, then you should spell that out. If you want to give blanket lack of liability to everybody who has anything to do with it, then you do it the way you have written it here.

Mr. Chairman: Unless I hear otherwise, all I have in front of me is Mr. Ward's amendment.

Mr. Leluk: Who can the consumers come back on?

Miss Stephenson: They do not come back on anybody. According to this, the consumer has no recourse in law.

Dr. Dyer: There is recourse to the manufacturer.

Miss Stephenson: To the manufacturer of what?

Dr. Dyer: The product.

Miss Stephenson: Is that the product dispensed interchangeably or the product that was prescribed and not dispensed?

Dr. Dyer: The one dispensed.

Mr. Chairman: It would be only the one dispensed, because that is the only one that would have been taken.

Miss Stephenson: Was it the manufacturer's fault that the product was dispensed? I do not like this. I do not think it is well written.

Mr. Chairman: Dr. Stephenson, you have remedies.

Miss Stephenson: I wish I had a remedy.

Mr. Chairman: One is to vote against the amendment and convince others they should do so as well. Then you can propose a further amendment.

Miss Stephenson: If we really want to attack the problem that the deputy outlined, then I think this should simply say, "shall be instituted against the person who issued the prescription, or the staff or employees thereof, or the dispenser and/or the staff or employees thereof on the grounds that an interchangeable product other than the one prescribed was dispensed." It is that group you are trying to protect, is it not?

Dr. Dyer: It would be the operator or the owner of the pharmacy as well.

Mr. Bernstein: Aside from the fact that the protection against liability is already provided for in subsection 155(4) of the Health Disciplines Act, the point of this amendment is to cover off the operator--to protect the operator of the pharmacy in the case where the dispenser, who is the person who does something under the authority of this act, is an employee. Therefore, the operator of the pharmacy, as the employer of that dispenser, would be liable for the acts of the dispenser. That is the only purpose of that.

If the minister and the deputy minister are liable for anything done under this, they are liable for their own acts, not for the acts of the dispenser. Justice will be meted out.

Miss Stephenson: If that is so, why does it not say that the person who issued the prescription, or the operator of the pharmacy, is responsible? If you want it all-encompassing, for goodness' sake, encompass those people whom you want to encircle with this protection.

Mr. Bernstein: The amendment encircles only those who need the

protection. The clerks, secretaries and so forth in the pharmacy do not require this kind of protection.

Miss Stephenson: David, I would be willing to bet that a critical and vigilant semanticist would be able to prove that you are wrong.

Mr. Chairman: I am getting the sense that we might as well take a vote on this amendment. If it does not pass, a further, more precise amendment about whom it is going to encompass could be brought forward. If it does pass, the more generic lasso would be acceptable.

Mr. Bernstein: I do not know if Dr. Stephenson was accusing me of being antisemantic.

Miss Stephenson: Bernstein, you do not improve. Yes, I was.

Mr. Chairman: All those in favour of Mr. Ward's motion to amend section 6 with the words "or any person who is responsible in law for the acts of either of them," please indicate.

Motion agreed to.

Section 6, as amended, agreed to.

On Section 7:

Mr. Chairman: "7(1) Every person who dispenses a drug pursuant to a prescription shall dispense the entire quantity of the drug prescribed at one time unless before the drug is dispensed the person presenting the prescription in writing authorizes the dispensing of the drug in smaller quantities."

I have no amendments on subsection 7(1). Sorry--yes, there are. The numbering is a little different.

Miss Stephenson moves that section 7 be struck out and the following substituted therefor:

"Every person who dispenses a drug pursuant to a prescription shall dispense the entire quantity of the drug prescribed at one time except when, in the professional judgement of the pharmacist and after consultation with the prescribing physician, it is determined that the amount should be varied."

Mr. D. S. Cooke: I understand what Dr. Stephenson is trying to achieve. It is difficult to put this kind of amendment in legislation when we are calling for professional judgement but there will also be a financial reward. If there is a smaller quantity issued, the pharmacist would get another dispensing fee at some point.

It would make much more sense to follow the suggestion we have in our amendment. That is simply to give authority to the Lieutenant Governor in Council to list drugs that should be dispensed for a smaller period of time, and not necessarily in their entire quantity. It is just an enabling section. The circumstances for issuing it in a smaller quantity are covered by subsection 7(2).

4:40 p.m.

Mr. Ward: I want to point out that subsection 7(2) is relevant to this particular section in that it states that the regulations may authorize dispensing a drug in less than the entire quantity prescribed under specified conditions.

Miss Stephenson: I understand the purpose of the direction of subsection 7(2), but surely the real determinant of whether the entire quantity should be dispensed is professional judgement exercised by both the people involved in the prescription. I am not at all sure that it is up to the Lieutenant Governor in Council to decide that you can prescribe only 10-days' worth of one kind of drug but you can prescribe six-months' worth of another. Surely it is rational to determine that on the basis of each individual circumstance and each individual prescription. I am not sure you want to regulate that kind of activity in regulations.

Hon. Mr. Elston: No.

Mr. Chairman: I understand the difference of opinion here. One is to state explicitly within the act that professional judgement is involved and the other is to suggest it be recognized in regulation.

Is there any further debate on that matter?

Miss Stephenson: Why does the mover of the government motion feel the Lieutenant Governor in Council is more capable of determining which drugs should be prescribed in smaller quantities and which in larger quantities than the trained pharmacist dealing directly with that individual patient and the physician prescribing it?

Hon. Mr. Elston: Since the regulations are to be set in conjunction with the Ontario College of Pharmacists who will be looking after this legislation, they have considerable ability to tell us a little about the professional judgement required. You may disagree with the concept of having it in the regulations, but I believe they are able to advise the Lieutenant Governor in Council about what regulations should be prescribed with respect to the conditions.

Miss Stephenson: There are certain regulations in this act which are entirely the responsibility of the Ontario College of Pharmacists and others entirely the responsibility of the Lieutenant Governor in Council. One hopes there will be consultation but, none the less, it may not happen.

I am concerned that there is what might be perceived as external intrusion into the role for which the professional pharmacist has been educated and trained. I am not sure that is the appropriate way to go with this. If you are anti-professional, I guess that is the direction you pursue.

Mr. Chairman: To come back to distinction, it might be possible for the regulations to stipulate that professional discretion be used. The distinction between the positions is one which makes it explicit within the act and the other which may or may not make it explicit within the regulations. That is where we are now.

Miss Stephenson: If you want it in the regulations, then why do you put this in the act at all? Why do you not eliminate this section completely? By enabling the Ontario College of Pharmacists to make regulations suggests that the college of pharmacists make the regulations in that section for which it is responsible.

Mr. Chairman: I understand the differences in opinion. All sides do. We should take the vote on Dr. Stephenson's amendment to subsection 7(1), which does not need to be read out again. I believe everybody knows the import of it.

All those in favour, please indicate. Down. Those opposed? It is defeated.

Motion negatived.

Mr. Chairman: Shall we go back to subsection 7(1)? All those in favour of subsection 7(1), please indicate. Down. Those opposed. Carried 6 to 3.

Subsection 7(2) reads, "Despite subsection 1, the regulations may authorize dispensing a drug in less than the entire quantity prescribed under specified conditions."

Miss Stephenson: You are becoming increasingly terrifying by the day.

Mr. Chairman: Is there any discussion of this subsection? We seem to have dealt with it primarily in dealing with subsection 7(1). All those in favour of subsection 7(2), please indicate. All those opposed please indicate? Carried.

Mr. D. S. Cooke moves that the bill be amended by adding the following subsection:

"(3) The regulations may designate specific drugs that are to be exempt from the application of subsection 1."

Mr. D. S. Cooke: As I understand it, the difference between subsection 2 and my proposed subsection 3 is that one covers conditions that would allow issuing the prescription at a lower quantity. I am suggesting there should be at least an enabling section--I hope the section would be taken advantage of--under which certain drugs could be regulated in terms of how long the prescription would be in effect. I am thinking specifically of things such as Valium.

Miss Stephenson: You are thinking of what?

Mr. D. S. Cooke: I am thinking of things such as Valium. We do not want to see that issued for six months at a time. This would give the minister the regulatory power to specify that drug as something that cannot be taken for more than 30 days or whatever.

Miss Stephenson: It is my personal opinion that if you are going to regulate Valium in that way, you should regulate it for 10 days rather than 30. That would be safer. However, I am not at all sure that is appropriate in this legislation.

Mr. Jackson: Are there drugs currently handled in this manner under the Ontario drug benefit plan?

Miss Stephenson: None.

Mr. Jackson: We received several presentations about professional judgement with respect to the dispensing of narcotics.

Miss Stephenson: There is no professional judgement left.

Mr. Jackson: Is that the intention of Mr. Cooke's amendment?

Mr. Chairman: To which, Mr. Jackson?

Mr. Jackson: To deal with the problem of professional judgement required in the dispensing of narcotics that was presented to us by several pharmacists. We had a couple of cases where a person had been applying to several pharmacies.

Mr. Chairman: Is that what you were trying to do, Mr. Cooke?

Mr. D. S. Cooke: Yes.

Mr. Chairman: That is what he was trying to deal with, Mr. Jackson.

Mr. Jackson: Given that Mr. Cooke did not see fit to support that motion previously, I wonder whether he will take a friendly amendment to the regulations, "shall designate specific drugs."

Mr. D. S. Cooke: I am not sure how that would be enforced. How would we force the Lieutenant Governor in Council to have an exhaustive list? It is an enabling section. That is what you do when you make regulations. You enable the Lieutenant Governor in Council to write regulations.

Mr. Jackson: I will ask the question another way. Given your explanation, you assume there is a chance the Lieutenant Governor may choose not to put this in the regulations. This is now clearly our opportunity to put it into the bill. I wondered whether you might consider not referring this to the regulations, but stating it in the form of the act.

Mr. D. S. Cooke: If we wanted to have it regulated every time a new drug product came on the market, we would have to amend the act.

Mr. Chairman: I gather we are having difficulty getting a consensus between the two of you.

Dr. Psutka: I have a comment. In Alberta, they have just introduced a ruling under which you can get only a three-day supply of certain narcotics. If I am not mistaken, there is also a fair amount of paperwork involved in getting those prescriptions filled. That could be what would happen with this type of regulation at this point. I do not know whether that is good or bad; it depends on which side of the fence one sits. It is one way of controlling utilization, but it eliminates any professional discretion.

Mr. Jackson: I am certain extra paperwork never scares the government.

4:50 p.m.

Mr. Chairman: It keeps us going. Is there anything further on Mr. Cooke's amendment? If not, we will vote on it. All those in favour of Mr. Cooke's new subsection 3? All those opposed? It is carried five to three.

Motion agreed to.

Mr. Chairman: Shall section 7, as amended, carry? All those in favour? All those opposed?

Section 7, as amended, agreed to.

On section 8:

Mr. Chairman: It says, "Every person who dispenses a drug pursuant to a prescription shall provide with the drug, in the manner prescribed by the regulations, particulars of the amount charged." There are no amendments to this, as I recall.

Miss Stephenson: No.

Mr. Chairman: Dr. Stephenson reminds me that this is what is currently the practice.

Section 8 agreed to.

On section 9:

Mr. Chairman: It says, "The Lieutenant Governor in Council may by regulation assign to a member of the executive council or to the Ontario College of Pharmacists the authority for enforcing this act." There is an amendment by Mr. Ward.

Mr. Ward moves that section 9 of the said bill be struck out and the following substituted therefor:

"9. The Ontario College of Pharmacists is responsible for the enforcement of this act in respect of operators of pharmacies and dispensers in pharmacies."

Mr. Chairman: Is there any discussion?

Interjection: There is no answer.

Mr. Chairman: I noticed that. I think I paused long enough. All those in favour of the amendment to section 9 will please indicate.

Motion agreed to.

Section 9, as amended, agreed to.

On section 10:

Mr. Chairman: Subsection 10(1) reads, "The person assigned the responsibility for enforcing this act may appoint inspectors for the purposes of this act."

Mr. Ward moves that subsection 10(1) of the bill be struck out and the following substituted therefor:

"(1) The Ontario College of Pharmacists may appoint inspectors for the purpose of enforcing this act."

Mr. Leluk, get it on the record.

Mr. Leluk: That was our amendment.

Mr. Ward: Do you want me to withdraw it?

Mr. Chairman: It is always good to share positive ideas. All those in favour of the amendment by Mr. Ward will please indicate.

Motion agreed to.

Mr. Chairman: Subsection 10(2) reads--

Mr. Reville: Mr. Chairman, will you stand that down? Mr. Cooke has an amendment and I do not see it here.

Mr. Chairman: All right. However, there is one that precedes his, so I will proceed to read it and see whether that one is introduced.

Subsection 10(2) reads, "An inspector may examine any records, in whatever form, in the possession or under the control of an operator of a pharmacy if the inspector believes on reasonable grounds that the records will assist the inspector in determining whether this act and the regulations have been complied with."

Is this how it initially read?

Miss Stephenson: Yes. Ours related to the records of the physician as well. That is inappropriate because the College of Physicians and Surgeons of Ontario would be responsible for dealing with that.

Mr. Chairman: This is where Mr. Reville's point on Mr. Cooke's motion comes up.

Miss Stephenson: I think Mr. Cooke's amendment was attempting to ensure that there is a parallel here with Bill 54 in terms of the best available price or the cost of the drug, rather than anything else with Bill 54.

Mr. Ward: It includes manufacturers.

Miss Stephenson: It is also wholesalers. That section in Bill 54 is--

Mr. Chairman: Mr. Reville, if you like, you can move that.

Mr. Chairman: Mr. Reville, moves that subsection 10(2) of the bill be struck out and the following substituted therefor:

"(2) An inspector or any person acting under the inspector's instructions may inspect any pharmacy and may examine any records in whatever form in the possession or under the control of an operator of a pharmacy or a manufacturer of an interchangeable product if those records are relevant to determine whether this act is being complied with."

Mr. Reville: It seems to add manufacturers.

Mr. Chairman: So that we are clear procedurally, this is an amendment to an amendment. The major change is the wording around the word,

"manufacturer." I will say it is in order as an amendment to your amendment, Mr. Ward.

Mr. Ward: I know we are trying to parallel Bill 54, but in Bill 54 we are dealing with benefits that are paid for by the provincial government. I question to what extent, in the marketplace, we have the right to get those records.

Miss Stephenson: The extent is that the committee has determined that the best available price is the lowest price. The best available price for each drug is that which will be listed in the formulary, which has the force of a regulation. This is not the right way to say this because what you are doing here is empowering the Ontario College of Pharmacists' inspectors, who ordinarily would be looking at the records of pharmacies, to inspect whatever record of manufacturers or wholesalers. That was not the intent in Bill 54. It was only sales records that we were looking at and nothing else. Although I recognize the intent, Mr. Cooke's amendment is inappropriate in this place at this time.

Mr. Chairman: Is there further discussion on Mr. Cooke's amendment? I am sorry; it is Mr. Reville's amendment, once in the name of Mr. Cooke.

Mr. D. S. Cooke: I am looking to see where the official opposition covers this. It was actually your amendment in Bill 54 that carried for inspections.

Miss Stephenson: Yes.

Mr. D. S. Cooke: Did you move a parallel amendment for Bill 55?

Miss Stephenson: No, we have not as yet.

Mr. D. S. Cooke: Do you have one? I am not being sarcastic. I am looking quickly through the summary to see whether you have one. I agree with the comments you are making that we cannot have the college inspectors doing the inspection of the manufacturers.

Mr. Chairman: For the moment, might I suggest that this might be the time to withdraw the motion and see whether there is another appropriate place and another appropriate vehicle? Can we agree on that? Is that all right with you, Mr. Reville, since it is your motion?

Mr. Reville: I will be happy to have it withdrawn.

Mr. Chairman: We now will discuss Mr. Ward's amendment. Is there Any further discussion on that?

Motion agreed to.

Mr. Chairman: Subsection 10(3) reads, "A person carrying out an inspection may, upon giving a receipt therefor, take away a record for the purpose of making a copy, but the copy shall be made and the record shall be returned as promptly as reasonably possible." I think I have just read the amendment by Mr. Ward. It is different from the initial one. It is fairly close to what we have in the other one. I believe we stuck to the words "reasonably possible" did we not?

Mr. Ward: I think so.

Mr. Chairman: Is there any discussion on this? Basically, it parallels Bill 54.

5 p.m.

Mr. Bernstein: There may be a friendly motion. The opening words, "A person carrying out an inspection," ought to be just "An inspector."

Miss Stephenson: An inspector.

Mr. Ward: That is what I wrote. Maybe I should have read this page.

Mr. Chairman: Is that the only change, "An inspector may"?

Mr. Ward: That is right.

Mr. Chairman: Maybe you should read it because it is different.

Mr. Ward: Yes, I should.

Mr. Chairman: You took out "therefor," which I really like. That is nice, antiquated language.

Mr. Ward moves that subsection 10(3) of the bill be struck out and the following substituted therefor:

"An inspector may, upon giving a receipt for it, take away a record for the purpose of making a copy, but the copy shall be made and the record shall be returned as promptly as reasonably possible."

This is slightly different, as noted, from the document by Mr. Nigro. Is there any further discussion? All those in favour will please indicate.

Motion agreed to.

Mr. Chairman: The initial subsection 10(4) has been changed, so I will read out the initial one.

"An inspector or a person acting under the inspector's instructions may at any reasonable time on producing proper identification enter business premises where the inspector or person believes a record referred to in subsection 2 may be located for the purpose of an inspection."

Mr. Ward moves that subsection 10(4) of the bill be amended by striking out "or a person acting under the inspector's instructions" in the first and second lines and by striking out "or person" in the fourth line.

It now reads as it does on page 16 of Mr. Nigro's document. Is there any further discussion of the clarified language? All those in favour of the amendment to subsection 10(4) will please indicate.

Motion agreed to.

Mr. Chairman: Is there anything else in section 10?

Miss Stephenson: Yes, there is.

Mr. Chairman: Yes, there is section 10a.

Section 10, as amended, agreed to.

On section 10a:

Miss Stephenson: Can we go through that section by section?

Mr. Chairman: Certainly. We will read it all out; then, if it is all right, we will go back to do each section.

Mr. D. S. Cooke moves that the bill be amended by adding the following section:

"10a(1) A manufacturer of a drug that is designated or being considered for designation as an interchangeable product shall,

"(a) supply that drug for the same price to all purchasers in Ontario, other than public hospitals, who purchase the drug or substance in the same dosage form and strength; and

"(b) give to the minister, on request, the information prescribed by the regulations concerning the production and sale of the drug.

"(2) Where a manufacturer of a drug contravenes this section or obstructs a person carrying out an inspection under section 10, the Lieutenant Governor in Council may refuse to designate the drug as interchangeable or, where it is already so designated, remove that designation."

The only change from what is in Mr. Nigro's document, as I see it, is that you took out "package size." Did you take out "quantity" in clause (a) as well?

Mr. D. S. Cooke: Yes.

Miss Stephenson: Why? That was in Bill 54.

Mr. D. S. Cooke: These amendments were drafted before we completed Bill 54, so we have to parallel Bill 54.

Miss Stephenson: It says "quantity." "Package size" is removed, but "quantity" is not.

Mr. Chairman: There are a number of other changes. At the moment, we will take it out, then the amendments can be made as we go through section by section.

In subsection 10a(1): "A manufacturer of a drug that is designated or being considered for designation as an interchangeable product shall," and then we will deal with clause (a).

Mr. D. S. Cooke: The difficulty--

Mr. Chairman: I am sorry. Is there already a problem?

Mr. D. S. Cooke: Yes. The difficulty is that originally, when this

amendment was drafted--it is my fault for not picking this up before--it was conceived that only interchangeables were going to be listed in this formulary. We are listing the best available price for each drug product. Therefore, there should not be the reference that only interchangeables have to be supplied at the same price in the same quantities.

Mr. Chairman: I think legal counsel, God bless her, has come up with a solution to this.

Ms. Baldwin: Subsection 10a(1) could begin, "The manufacturer of a drug product that is designated or being considered for designation shall."

Mr. Chairman: Mr. Cooke, did you hear that? Is it acceptable to you?

Mr. D. S. Cooke: Sure. I am just looking at Bill 54 to see--

Ms. Baldwin: There may be other problems. I will have a look through the bill.

Mr. Chairman:" Let me just hear that part again so that I have it. Have you got it, Mr. Reycraft? Can you read it to me?

Mr. Reycraft: "The manufacturer of a drug product that is designated or being considered for designation shall."

Mr. D. S. Cooke: No. Because we are not talking just about "designated." What does "designated" mean?

Ms. Baldwin: "Designated" means "designated as interchangeable."

Ms. Stephenson: No.

Ms. Baldwin: What is your concern, Mr. Cooke?

Mr. D. S. Cooke: The difficulty is that under Bill 55, under "best available price" we are going to determine a best available price for every drug. If it is a single-source drug, we still have to have the best available price for it.

Ms. Baldwin: Yes, but this section is speaking to the issue of designation as an interchangeable product.

Mr. D. S. Cooke: This section is saying that the same price has to be available to everybody who buys in the same quantity, whether it is interchangeable or whether it is a single-source drug.

Miss Stephenson: Is "designated" in this act designation as interchangeable? I thought it simply meant "listed in the formulary."

Mr. Chairman: In the definitions section there is no word on "designation," but the definition of "interchangeable"--

Miss Stephenson: It says that in this act "designated" means designated by the regulations.

Mr. Chairman: It is listed, but not necessarily as interchangeable.

Miss Stephenson: That is right.

Mr. Chairman: The term "designation" covers everything on the list, whereas the term "interchangeable" causes problems.

Miss Stephenson: "Designation" means it is listed; that is right. You could also designate as interchangeable, but if it is simply "designated," then it is designated for listing in the regulations, which is the formulary.

Mr. Chairman: If we take out the phrase, as the legislative counsel suggested, it meets what Mr. Cooke is after on this.

Mr. Ward, do you have a comment on this, or does that cover what you wanted?

Mr. D. S. Cooke: It may already be covered. I was asking whether the motion would mirror the wording in Bill 54 and work from there, if it does not already. Perhaps it does already.

Mr. Chairman: Legal counsel is having some difficulty with this.

Ms. Baldwin: I am still having some difficulty, Mr. Cooke. The committee has passed sections dealing with the definition of best available price and the required amounts to be charged for supplying prescription drugs. As the committee has passed it, that now applies to all prescription drugs and not just to interchangeable products.

Bearing that in mind, I do not think it makes sense to restrict section 10a to products that are designated, because you are trying to cover all prescription drugs. I am wondering whether your intention in section 10a is not just to be dealing with the interchangeable drugs. That is all that makes any sense as far as I can figure out, and I am happy to be dissuaded.

Mr. McGuigan: In the United States, there is legislation covering everything you merchandise, including drugs and groceries. Under that legislation, if you give a discount to one person, you have to give it to another person for the same quantity. I would love to see that here in Canada.

Mr. D. S. Cooke: Is that what you are after?

There is a parallel section in Bill 54 that says you have to supply like quantities at the same price. This is the parallel section.

Ms. Baldwin: Let me put it in another way. I think the effect of what you are suggesting is that a prescription drug that does not meet these standards cannot be sold in Ontario.

Mr. D. S. Cooke: That is deplorable.

Ms. Baldwin: That is what I am afraid of. I am not sure whether that is what you are after.

Mr. Chairman: Mr. Bernstein has a comment.

Mr. Bernstein: Would legislative counsel find it acceptable to provide in the regulation-making power for a power to designate single-source drugs for the purpose of subsection 10a(1), so that at least you get in your concept of designation of single-source products? Then you have two kinds of

designations of products. One is of interchangeable products and the other is of noninterchangeable products for the purposes of subsection 10a(1).

Miss Stephenson: Why would you have to do that? Designation in this act means listing.

Mr. Bernstein: Yes, but there is no provision so far for designation of single-source products. Here you are talking about best available price of a single-source product.

Miss Stephenson: We have said that earlier.

Mr. Bernstein: We have already provided for that price to be prescribed in the regulation, so there is already a contemplation that the price of single-source products will be prescribed in the regulations. You only need to go on to add that the products themselves will be designated in the regulations and then you have a category of designated single-source products for which subsection 10a(1) can apply.

Mr. Chairman: I am not sure where we are at the moment in terms of subsection 10a(1).

Mr. D. S. Cooke: That makes two of us.

Miss Stephenson: I have a feeling that this was drafted before we modified the concept of price and best available price in Bills 54 and 55. I have some trouble with 10a(1), for example, because I am not really sure how you enforce it on a manufacturer of a drug that is being considered for designation. I do not know how long that would take. I have no idea.

Mr. D. S. Cooke: Your problem with 10a(1) is--

Miss Stephenson: The goal we had was to try to ensure that all drugs sold in Ontario would be sold at approximately the same price, whether they were sold directly to a large pharmacy chain or to a wholesaler. That was the goal we shared because we heard stories that some of the pharmacies were not able to buy drugs at anything near the price at which they were available to some of the larger chains. We heard from Drug Trading that even it could not buy them at the same price as wholesalers.

Therefore, what we were trying to do was to ensure that, when a drug was going to be sold in Ontario, the same quantity of that drug in the same form, dosage and strength would be available to a wholesaler, a large chain, a small chain or whatever, at the same price. I am not sure that is necessary now, because we have already prescribed best available price, which almost ensures that is going to happen.

Mr. D. S. Cooke: We took your amendment in Bill 54 on this same topic. The difference in Bill 54 is that if they do not follow it, then potentially they can be taken out of the Ontario drug benefit plan, as well as the fine. Is there not some way we could simply put in a section which says that you have to sell it at like quantities at like prices?

Miss Stephenson: Yes, if that is a goal that needs to be defined.

Mr. D. S. Cooke: If there is not a way of enforcing it by listing, then we have to enforce it by means of the fine.

Ms. Baldwin: If that is what the committee wants, that could be done. That is quite another matter from section 10a as it is set out. It would not be difficult to draft if that is what the committee wants to do.

Mr. D. S. Cooke: If you do not have something like this in the bill, sure, you will have a price listed in the regulations, but if manufacturers do not sell it at the same price, it does not work too well for small pharmacists who are buying it through the wholesalers.

Mr. McGuigan: If you rely on its being available, it may not be available to certain people.

Miss Stephenson: I think the strictures on "best available price" that have already been worked in are sufficiently detailed.

Ms. Baldwin: That is another matter.

Mr. Chairman: I will make a recommendation to you, Mr. Cooke. It looks as if the amendment you propose is not appropriate to the ends you are after, but you have some desire to bring in some type of amendment, for the reasons you just indicated, that would have the effect you are talking about.

There are two options. One would be to proceed in terms of section 11 and see if there is an easy drafting of what you just suggested. That can be worked out while we do that. The other would be to suggest that this be brought back in committee of the whole.

It looks as if you need a little time to deal with that. Right at the moment, we are not getting anywhere with it. I am a little worried. We are just being very fuzzy.

Miss Stephenson: I think we can do it. If we simply said that--

Mr. Chairman: I would prefer if a couple of people could put their heads together trying to draft this. We will leave the section open. We will not close the section off at the moment. It is a new section anyway. We will stand it down at the moment and that allows us to come back to it. Is it all right with the committee that we stand this down at the moment and see if a replacement can be developed? In the meantime, we will go on to section 11.

On section 11:

Mr. Chairman: Subsection 11(1) reads: "Any person who,

(a) contravenes subsection 2(2) (dispense product requested);

(b) contravenes subsection 2(3) (inform customer of interchangeable product);

(c) Contravenes section 3 (dispense interchangeable when generic prescribed);

(d) contravenes section 4 (maximum dispensing fee set and posted);

(e) contravenes section 5 (maximum allowable charge);

(f) contravenes section 7 (dispense entire quantity);

(g) contravenes section 8 (inform person of cost); or

(h) obstructs any person carrying out an inspection under section 10,

"and any director, officer, employee or agent of a corporation who authorizes, permits or concurs in such a contravention by a corporation is guilty of an offence under this act and liable to a penalty of not more than $10,000."

That is the initial rewording in the act. You will note that on Mr. Nigro's document there are changes. Mr. Ward, perhaps you should just move them as we go through. Why do we not do that? Let us deal with each as we come to it.

Clause 11(1)(a) stays the same as I understand it. There is no amendment. Any discussion? All those in favour of clause 11(1)(a)?

I am sorry, do you have one, Mr. Leluk? I did not mean to rush through this.

Miss Stephenson: That is just renumbering.

Mr. Chairman: I think that is just renumbering. What we will do is take this and we will deal with that at cleanup by legislative counsel afterwards. All those in favour of clause 11(1)(a). Carried.

Is there an amendment to clause 11(1)(b)? Is that one of yours, Bette? I see some wording to one there. I think that is the wrong numbering.

Miss Stephenson: Just numbering.

5:20 p.m.

Mr. Chairman: Any further discussion on clause 11(1)(b)? All those in favour? Carried.

Clause 11(1)(c): No amendments? All those in favour, please indicate. Carried.

Mr. Ward moves that clause 11(1)(d) of the bill be amended by striking out "maximum" in the first line and inserting in lieu thereof "usual and customary."

Mr. Ward: This is the same motion as that of the official opposition.

Mr. Chairman: "Usual and customary is language we have been using fairly consistently now. All those in favour of the amendment by Mr. Ward, please indicate. Those opposed?

Agreed to.

Mr. Chairman: Is the wording of clause 11(1)(e) all right? Those in favour, please indicate.

Agreed to.

Mr. Chairman: No amendment to clause 11(1)(f)? All those in favour? Opposed?

Agreed to.

Mr. Chairman: Any discussion on clause 11(1)(g)? Seeing none, all those in favour? Opposed? It would be helpful if hands rose on occasion. It would really make it a lot easier for me to be sure that you are one with me on this.

Hon. Mr. Elston: I am sure you have Mr. Jackson's motions.

Mr. Chairman: All those in favour of clause 11(1)(h)--just the wording, "obstructs any person carrying out an inspection under section 10"?

Agreed to.

Mr. Chairman: Mr. Ward moves that subsection 11(1) of the bill be amended by striking out "officer, employee or agent" in the 15th line and inserting in lieu thereof "or officer" and by striking out "permits or concurs in" in the 16th line and inserting in lieu thereof "or permits."

Any discussion of this change? All those in favour of the amendment, please indicate. Those opposed?

Agreed to.

Mr. D. S. Cooke: If we can deal, since legislative counsel gave me an easy suggestion for section 10a, we would need to have a subclause 11(i) that simply says, "contravenes section 10a."

Mr. Chairman: Because we stood down Mr. Cooke's motion, why do we not go back and look at section 10a before we actually take the full vote on subsection 11(1)? Then we can come back and decide whether we need to keep it open or not. Agreement? We are going back to Mr. Cooke's section 10a. We will leave 11(1) open until we see whether or we have to refer to section 10a in it.

Mr. D. S. Cooke: Subsection 10a(1): "A manufacturer of a drug product sold by prescription shall (a) supply that drug for the same price to all purchasers in Ontario other than public hospitals, who purchase the drug or substance in the same dosage form and strength; and (b) give to the minister, on request, the information prescribed by the regulations concerning the production and sale of the drug."

Mr. Chairman: Could you furnish me with a copy? I would like to speak to how it meets some of the concerns raised. So all of this is changed from the initial one, as I understand it, Mr. Cooke. Am I right about this? On subsection 10a(1), the wording would be: "A manufacturer of a drug product sold by prescription" and leave everything else out?

Mr. D. S. Cooke: Right.

Mr. Chairman: You are striking the penalty section?

Mr. D. S. Cooke: Scratch, what is it. Subsection--?

Mr. Chairman: Subsection 2?

Mr. D. S. Cooke: Right. We will amend the penalty section.

Mr. Chairman: I see. Fine. Is that understood? We are at 10a and it would now read as follows.

Mr. D. S. Cooke: I will get an amendment to that.

Mr. Chairman: Just to make sure that everyone understands the new wording of this, okay? If you look at Mr. Cooke's initial motion, which looks like this, for any of you who do not have it. You have it there. Good. It would now read as follows: "I move that section 10a be amended by adding the following section: subsection 10a(1) A manufacturer of a drug product sold by prescription shall (a) supply that drug for the same price to all purchasers in Ontario, other than public hospitals, who purchase the drug or substance in the same dosage, form or strength; and (b) give to the minister, on request, the information prescribed by the regulations concerning the production and sale of the drug." That is how it now reads.

Mr. Leluk: We were more concerned about the sales records for the product in question. Why do we need the production records?

Miss Stephenson: We are talking about all prescription drugs whether, indeed, they have been listed or not listed and, therefore, are included in the regulation or not included in the regulation. We are requiring this of everything.

Mr. Leluk: Why do we need production?

Miss Stephenson: We do not. Is that--

Mr. Chairman: My reading of it would be that--well, let me give it to Mr. Cooke to expand on it. I think you have interpreted it correctly.

Mr. D. S. Cooke: The principle is that which was given to us in front of the committee many times by presentations. If there is a deal, everybody should have access to the deal if they buy in the same quantity.

Mr. Ward: In the package of amendments we handed out yesterday, there was one that was put as an amendment under section 11a that should have read section 10a. You will have it in front of you. I move that Mr. Cooke's motion be amended by striking out clause (a) and substituting therefor the following: (a) "Supply that drug product for the same price to all purchasers in Ontario, other than persons purchasing solely for use in the treatment of hospital patients and out-patients, where the purchasers purchase the same quantity of individual units of the drug product in the same dosage form and strength and..."

Mr. Chairman: Is that a friendly amendment?

Interjection: That parallels Bill 54.

Mr. Ward: It parallels Bill 54.

Mr. Chairman: That is a friendly amendment. It could be included in the body of Mr. Cooke's amendment.

Mr. McGuigan: The only problem is with the word "same." In commercial practice, if you change a thing by a minute amount, it is not the same money as--

Miss Stephenson: It is an equal amount we are talking about.

5:30 p.m.

Mr. Chairman: We have not been told by legislative draftspeople that was a problem. If it is, when we come back to committee of the whole House, I presume it will be cleared up. As I understand it, it means equal quantity or whatever.

Miss Stephenson: That is fine.

Mr. Leluk: I would like to move an amendment to Mr. Cooke's amendment.

Mr. Chairman: Mr. Leluk moves that in clause 10a(1)(b) the words "production and" be deleted.

I presume it is in order, for the reasons that were already enunciated.

Mr. D. S. Cooke: I might point out that my amendment parallels Bill 54, which if I remember correctly, was the Tory amendment, which reads, "Give to the minister, on request, the information prescribed by the regulations concerning the production and sale of the drug product."

Miss Stephenson: That is for a drug which is to be included in the formulary.

Mr. D. S. Cooke: This is for drugs to be sold at the same price, to get the same deals. It is a parallel section to Bill 54.

Miss Stephenson: The request for information in 54 related to the designation of drugs specifically for interchangeability or for use in the Ontario drug benefit program, which meant it had to be listed in the formulary. I think the minister has the responsibility and the authority to require that information for that listing. I am not at all sure the minister has the authority to require production records for things that are not going to be listed within the formulary. Here again, we are using the same regulation to provide information for pharmacists. If we are talking about designated or listed drugs, I do not see why we could not have Mr. Cooke's amendment with that wording in it, "designated drugs" or "listed drugs," whichever you want to use. I think the minister has the authority to request that if the drug is to be listed within the formulary.

Mr. Chairman: That is Bill 54's definition of "designation" rather than Bill 55's.

Miss Stephenson: No, Bill 55 is a designation as well. I am sorry; Bill 55 says "designation" right at the very beginning. The very first definition is "designated." It says it "means designated by the regulations," and the designation by regulations is for listing within the document.

Mr. Chairman: It does not mean within the ODB, though.

Miss Stephenson: No.

Mr. Chairman: I understand what you are saying.

Miss Stephenson: I am not sure the amendment would be appropriate

unless the drug were going to be so designated or listed for the purposes of Bill 55.

Mr. Chairman: What we are dealing with at the moment is an amendment by Mr. Leluk that the words "production and" be deleted from clause 10a(1)(b).

Miss Stephenson: It is my understanding that any drug which is for sale for prescription in Ontario must have passed the health protection branch activity, and the production information is required within that area of responsibility. I am not sure that we can demand that information unless we are going to take an additional responsibility by listing it in a formulary.

Mr. Chairman: The argument is fairly straightforward on this whole question of the production records being required. Is there any further debate on this amendment? Then we can deal with others or the amendment as a whole as suggested by Mr. Cooke.

All those in favour of Mr. Leluk's motion, which is to delete the words "production and" from clause 10a(1)(b), please indicate.

Those opposed?

Motion negatived.

Miss Stephenson: You have no authority to do that.

Mr. Jackson: They do now.

Mr. Chairman: It is not a subamendment. It was accepted as a friendly amendment.

Miss Stephenson: You do not have any authority to do it, because you simply stated that any drug which is for sale--

Mr. Chairman: Order. We have just dealt with that. If it is a matter for debate at a later time, that is a matter for debate at a later time. We just defeated the amendment to delete.

Miss Stephenson: Why waste time with it?

Mr. Chairman: The question now arises on whether you wish to deal with the amendment as a whole with the friendly amendment of Mr. Ward included in clause 10a(1)(a), or whether you wish further amendment. Dr. Stephenson was speaking earlier while we were dealing with the last one about an amendment on the question of the designation and wording to that effect. I am in your hands. I have no amendment before me, other than that which Mr. Cooke presented and which has undergone a friendly change by Mr. Ward.

Mr. Bernstein: I am not sure where we are.

Mr. Chairman: It is very straightforward where we are at the moment. We are back with Mr. Cooke's motion which now reads, "A manufacturer of a drug product sold by prescription shall:

"(a) supply that drug product for the same price to all purchasers in Ontario, other than persons purchasing solely for use in the treatment of hospital patients and outpatients, where the purchasers purchase the same quantity of individual units of the drug product in the same dosage form and strength; and

"(b) give to the minister, on request, the information prescribed by regulations concerning the production and sale of the drug." This is where we are at the moment.

Mr. Bernstein: The only reason I mentioned the point is that I am not quite sure whether there will be a debate about Dr. Stephenson's point about the word "designation." However, the phrase, "a drug product sold by prescription" is one that ought not to go by without the committee having a chance to consider whether that is an appropriate phrase.

If the intention was to exclude over-the-counter drugs, the phrase should probably be, "a manufacturer of a drug product other than a product which does not require a prescription for sale," which happens to be the phrase in Bill 54. If that is the intent of that motion, that it exclude over-the-counter drugs--

Mr. Chairman: Is that the intent of your motion?

Mr. D. S. Cooke: That is to parallel Bill 54. I am sure that is what I meant.

Mr. Chairman: What will the wording be, Mr. Cooke, through Mr. Bernstein--

Mr. Bernstein: "A manufacturer of a drug product other than a drug product which does not require a prescription for sale."

Mr. Ward: Could we not just add that clause 10a(1)(b) is included in that list? That clause was what exempted products do not require prescriptions for sale from the provisions of different sections of this act. I am sorry I mentioned it.

Mr. Chairman: I was hoping you would be.

Miss Stephenson: Not sorry enough, obviously.

Mr. Chairman: Exactly, you have not tried enough. I do not know whether it would be possible to leave this in. Our legal counsel has a suggestion for us.

Ms. Baldwin: I have a suggestion to file on top of Mr. Bernstein's suggestion, just to make it a little clearer. Why do we not just say, "a manufacturer of a drug product that requires a prescription for sale"?

Miss Stephenson: That is certainly simpler. It is understandable. It is not legalese.

Mr. Chairman: "A drug product that requires a prescription for sale." Mr. Cooke, is that a friendly amendment?

Mr. D. S. Cooke: Yes.

Mr. Chairman: Is there any further debate on clauses 10a(1)(a) and (b)? Seeing none, all those in favour of Mr. Cooke's motion, please indicate.

Miss Stephenson: Is it actually everything except nonprescription drugs?

Mr. Chairman: Why do people always ask me questions after I have called the vote and I have had a long hesitation?

Miss Stephenson: I have been asking and nobody has answered the question.

5:40 p.m.

Mr. Chairman: The wording is now, "manufacturer of a product that requires a prescription for sale shall."

Miss Stephenson: You are talking about any product that requires a prescription for sale. How many of those are there?

Dr. Dyer: There are 4,000.

Miss Stephenson: Where are you going to keep all these?

Mr. Chairman: Do you want me to remind you of the wording of this motion before you take your vote? Is the motion understood? You can vote for it or you can vote against it. These are your choices.

Miss Stephenson: For designated drugs I am absolutely convinced this is the right thing to do, but I do not know how we can do it otherwise.

Mr. Chairman: Then I suggest you vote against it. Mr. Ward has gone for a walk.

I suggest we take the vote at this time. If it does not pass, there is always another opportunity to deal with it if people come up with a better solution. That opportunity is called committee of the whole House. Let us take our vote now and see what you wish to do with it today.

All those in favour of Mr. Cooke's section 10a, please indicate.

All those opposed, please indicate.

Motion negatived.

Mr. Chairman: Let us return to section 11. We were just about to take the vote on the whole revised subsection 11(1). There now will be no allusion to anything in 10a because such a section does not exist.

All those in favour of subsection 11(1), as amended, please indicate.

Miss Stephenson: Does that include all the clauses of subsection 11(1)?

Mr. Chairman: It includes all those before subsection 11(2).

Motion agreed to.

Mr. Chairman: We now move to subsection 11(2), which reads as follows:

"The maximum penalty that may be imposed upon a corporation is $50,000 and not as provided in subsection (1)."

Miss Stephenson: There is no amendment here. Again, the concern is that there may be a very small incorporated pharmacy for which it would be a horrendous blow to have a fine of $50,000.

Mr. Chairman: An amendment to change that would be in order.

Miss Stephenson: An amendment to reduce the penalty. It has been suggested that there should be a first-offence fine of $5,000. The fine for second or subsequent offences should be $10,000.

Mr. Peluk: There should be no difference for corporations operating pharmacies.

Miss Stephenson: That is right.

Mr. Chairman: What would be the wording exactly?

Miss Stephenson moved that subsection 11(2) be struck out and the following substituted therefor:

"(2) The maximum penalty that may be imposed upon a corporation is $5,000 for a first offence and $10,000 for second or subsequent offences."

Miss Stephenson: That is different from subsection 11(1).

Mr. Chairman: The reason I hesitated at the end of subsection 11(1) was that nobody changed that amount, so it is not parallel to what we have done in Bill 54; as long as you understand that, as I presumed you did. That is why I waited for you to make a decision on subsection 11(1).

The motion we are dealing with at the moment on subsection 11(2) is by Dr. Stephenson.

Miss Stephenson: The parallel one would be that the maximum penalty should be $10,000. Is it not that in Bill 54?

Mr. Jackson: No, we lost that battle.

Mr. Chairman: I remind members at this point that the motion we have before us, unless I hear otherwise, is that the maximum penalty should be $5,000 for a first offence and $10,000 for a second or subsequent offence for a corporation.

Miss Stephenson: For "any director, officer, employee or agent of a corporation." No, that is not right.

Mr. Chairman: No. We have taken the vote on subsection 11(1). We are now dealing with subsection 2 and it is only the corporation.

Miss Stephenson: If the corporation is one small pharmacy, do you really want to impose a fine of $50,000?

Mr. Ward: We have here an amendment that, as I read it, would set a $5,000 fine for a first offence.

Miss Stephenson: Yes, that is on the order of what I suggested.

Mr. Ward: What is in the legislation only establishes a maximum,

which is determined by the courts on the basis of the misdemeanour. I read the amendment to result in much bigger fines anyway, perhaps on minor offences. I do not see the need to lower the $50,000 limit because the court will determine its judgement in relation to whatever the misdemeanour was. I do not know why we should bother with this one. We are silent on the lower end and they do set an upper limit.

Mr. Chairman: Is there further discussion on the amendment to subsection 2?

Miss Stephenson: I wish I had the same sense of security that the courts will be selectively flexible on the level of the penalty. It does not always happen. I suggest my first proposed amendment is inappropriate and there should be a maximum penalty of $10,000.

Mr. Chairman: Sorry?

Miss Stephenson: I suggest the maximum penalty that may be imposed on a corporation be $10,000.

Mr. Chairman: The initial motion is withdrawn and the new amendment is that the maximum penalty that may be imposed on a corporation be $10,000.

Ms. Baldwin: If that is what Dr. Stephenson wants, she should just vote against subsection 2, because the maximum penalty under subsection 1 already is $10,000.

Miss Stephenson: Not $5,000. That is fine.

Mr. Chairman: That would be the easiest way of dealing with it. Thank you very much, counsel. We are back to the initial subsection, which includes the $50,000 fine. We will vote on that. If you vote against it and that carries, then what is in subsection 11(1) will apply.

Mr. Jackson: Can we have a recorded vote?

Mr. Chairman: Yes.

The committee divided on subsection 11(2), which was agreed to on the following vote:

Ayes

Cooke, D. S., McGuigan, Miller, G. I., Reville, Reycraft, Ward.

Nays

Baetz, Jackson, Leluk, Stephenson, B. M.

Ayes 6; nays 4.

Mr. Chairman: All those in favour of section 11, as amended, please indicate. Those opposed?

Section 11, as amended, agreed to.

5:50 p.m.

On section 12:

Mr. Chairman: Section 12 is on the matter of regulations.

Mr. Ward moves that section 12 of the bill be struck out and the following substituted therefor:

"12(1) The Lieutenant Governor in Council may make regulations,

"(a) prescribing conditions to be met by products or by manufacturers of products in order to be designated as interchangeable with other products;

"(b) designating a product as interchangeable with one or more other products where the Lieutenant Governor in Council considers it advisable in the public interest to do so, but a product shall not be designated as interchangeable with another product if,

"(i) it does not contain a drug or drugs in the same amounts of the same active ingredients in the same dosage form as the other product, or

"(ii) the product or its manufacturer has not met the conditions described in clause (a);

"(c) providing for the maximum amounts chargeable for interchangeable products (section 5);

"(d) prescribing the circumstances under which more than the usual and customary dispensing fee may be charged and providing for the amount of that fee (subsection 5(3)).

"(2) Subject to the approval of the Lieutenant Governor in Council and with prior review by the minister, the council of the Ontario College of Pharmacists may make regulations,

"(a) prescribing the manner in which persons shall be informed of the right to request an interchangeable product (subsection 2(3));

"(b) prescribing the information to be included in a notice (subsection 4(2)) and the manner of posting a notice;

"(c) prescribing the manner of calculating the cost to an operator of a pharmacy of purchasing an interchangeable product (subsection 5a(4));

"(d) authorizing dispensing a drug in less than the entire quantity prescribed and specifying the conditions under which that authority is to apply (subsection 7(2));

"(e) prescribing the information concerning cost to be provided on sale and how it is to be provided (section 8);

"(f) requiring operators of pharmacies to retain specified records respecting their purchase of drugs for the purposes of this act and prescribing the period of time those records shall be retained.

"(3) Where the minister requests in writing that the council of the Ontario College of Pharmacists make, amend or revoke a regulation under subsection (2) and the council has failed to do so within 60 days after the request, the Lieutenant Governor in Council may make the regulation, amendment or revocation specified in the request.

"(4) A regulation made under subsection (1) or (2) may be general or particular in its application."

I will divide this into at least two parts to start off with. One part is strictly for regulations set by the Lieutenant Governor in Council and the other part is the new section pertaining to the role of the council. Shall I go through it and take the vote subsection by subsection?

Miss Stephenson: Yes.

Mr. Chairman: Subsection 12(1) and clause (a) read:

"(1) The Lieutenant Governor in council may make regulations,

"(a) prescribing conditions to be met by products or by manufacturers of products in order to be designated as interchangeable with other products."

Any debate?

Mr. D. S. Cooke: I take it that since we were not able to work out an amendment on section 10a, if the Lieutenant Governor in Council wanted to set as a condition that they all have to provide it at the same price, this could be covered by regulation.

Miss Stephenson: Sorry, I did not hear. What was--

Mr. Chairman: Mr. Cooke was asking whether it would be possible for the impact of what he was after in his section 10a to be handled under clause 12(1)(a), if that were the will of the cabinet and the Lieutenant Governor.

Mr. Bernstein: There is a good chance that could be a valid condition under clause 12(1)(a), but it is always possible that a court would say that type of condition is not within the contemplation of the act and, therefore, not a permissible condition.

Mr. Chairman: Any further discussion of clause 12(1)(a)?

All those in favour, please indicate. Those opposed? Carried.

Mr. Chairman: Clause 12(1)(b) reads;

"(b) designating a product as interchangeable with one or more other products where the Lieutenant Governor in Council considers it advisable in the public interest to do so, but a product shall not be designated as interchangeable with another product if,

"(i) it does not contain a drug or drugs in the same amounts of the same active ingredients in the same dosage form as the other product, or

"(ii) the product or its manufacturer has not met the conditions described in clause (a)."

Discussion?

Miss Stephenson: The concern that was expressed yesterday by Mr. Cooke is one I understand, and Dr. Psutka--

Ms. Baldwin: I think we should do it separately--

Miss Stephenson: All right.

Mr. Chairman: What we did outside of clause 12(1)(b) will be a new subsection. We are just dealing with clause 12(1)(b). Any more discussion of it? Seeing none, all those in favour--

Interjection.

Mr. Chairman: Are you not going to do this as a new subsection, Dr. Stephenson? I thought that is what you said.

Miss Stephenson: I understand the rationale used by the legislative counsel, which is valid, but my concern is still that we must have some mechanism for ensuring the public safety if we are going to legislate the existence of the program inherent within this bill.

Mr. Chairman: A motion will be in order. I am trying to find out whether you want to do it under clause 12(1)(b) or whether you want to make a new subsection.

Miss Stephenson: There might be additional sections there, but it requires a subsection following that as well, to provide for the kind of grandfathering which both Dr. Psutka and Dr. Dyer suggested was essential for the purposes of publishing a formulary.

Mr. Chairman: Why do we not take a vote on subclauses 12(1)(b)(i) and (ii)? If you wish to do something additional under clause 12(1)(b), you may do so, and if you wish to introduce a subsequent subsection, you may do so. How is that?

Miss Stephenson: Yes.

Mr. Chairman: All those in favour of subclauses 12(1)(b)(i) and (ii), please indicate. Those opposed? Carried unanimously.

Mr. Chairman: Do we have a subclause (iii)?

Miss Stephenson: I have proposed subclauses (iii), (iv) and (v).

Mr. Chairman: Miss Stephenson moves that clause 12(1)(b) be amended by the addition of the following subclauses:

"(iii) equal bioavailability of the active ingredients has not been established in appropriate pharmacokinetic studies,

"(iv) equal therapeutic effectiveness has not been established in clinical trials pursuant to the regulations under the Food and Drugs Act (Canada) for the approval of the new drug, and

"(v) the frequency and severity of side-effects no greater than that of the original product has not been established in clinical trials pursuant to the regulation under the Food and Drugs Act (Canada) for the approval of a new drug."

Miss Stephenson: This is to ensure that there is a mechanism for the purpose of including new drugs in the formulary. This will require an

additional subsection, however, to provide for the inclusion for a specific period of time of those interchangeable drugs which are currently within the formulary, providing the DQTC with a period of years to determine whether, as a result of a clinical experience with those drugs already included, no clinical trials needed to be carried out or whether the scope and the size of the clinical trials were needed to maintain their listing or their inclusion within the formulary.

Mr. Chairman: We have a motion by Dr. Stephenson which, if members who have their documentation still in some order go back to what was proposed in section 1, would be placed as new subclauses (iii) (iv) and (v) of subclause 12(1)(b).

We had a fairly full debate on this yesterday. It was a matter of trying to find an appropriate location for this motion. As Dr. Stephenson says, if this were to carry, there would be need for a subsequent subsection to do some grandfathering, however we want to word that requirement. Is there any debate on subclauses (iii), (iv) and (v) as recommended by Dr. Stephenson?

6 p.m.

Miss Stephenson: I hope the members of the committee have read the material that was distributed by the clerk of the committee after the committee rose from dealing with Bills 54 and 55. A fairly significant number of papers written by commissions have outlined the concern for the need for examination other than simply the pharmacokinetic testing currently being carried out.

I have been deluged within the past 24 hours by communications from members of staff within the health protection branch who feel that because interchangeability is not within their bailiwick, they do not have the authority or the right to move in the direction of attempting to ensure that reasonable trials are carried out. They suggested strongly that the existence of the DQTC here, and its capability, ensure that there is sufficient flexibility to permit that committee to determine the scope and the range of clinical trials that would be necessary in the admission of a drug for designation, and they said we should be considering this very seriously.

I am disturbed that in the legislation of a formulary which is going to be a guide for physicians and pharmacists, there will be an understanding of interchangeability which is inappropriately based. The basis of the chemical tests only, or the pharmacokinetic tests, is increasingly challenged. I am informed that it is now being challenged not only in the US and in Canada, but also in the Netherlands and in Germany. A number of publications are coming forward within the next several months.

I feel if we are going to write this legislation, we should write it appropriately. The existence of the committee provides us with the capability to do what is necessary and to determine the degree of investigation appropriate for each new addition and, I suggest to you, for examination of the drugs currently within the formulary as well. Mr. Cooke's primary concern was that we did not want to disrupt the formulary. If we left the drugs that are designated for a period of time to give the DQTC sufficient time to determine whether clinical trials are needed and, if they are, what scope of trials should be carried out, and to carry out these trials to maintain the listing, then we have covered that base.

Mr. Chairman: Any further discussions on subclauses 12(1)(b)(iii), (iv) and (v)? Recorded vote? Do you want to press on to work on the next section?

Miss Stephenson: If there is going to be a significant vote against this, I wonder if I could hear the rationale for the arguments. In spite of some of the suggestions that have been made, my only concern is the protection of the public. If you are going to legislate this into existence, you had better be prepared to protect the public as fully as you can.

Mr. Chairman: There has been a fair amount of debate on this issue already. A lot of information has been given to us. I think the question at hand for members is to determine whether they want to try to provide that protection through the amendments you are now proposing and whatever may come subsequently, or whether they think the present testing system which is being used is appropriate. I cannot order people to speak again on it. At least I am reluctant to.

Mr. McGuigan: I am new to the committee. In fact, I am substituting here today, so I have not heard the arguments. Are those matters not covered in other pieces of legislation? Federal?

Mr. Leluk: The federal government does not cover it.

Mr. Chairman: Testing is done at the federal level by HPB but the question of interchangeability is a provincial matter, so it is not done in that way. We have received many deputations from experts who felt the present system of testing was adequate and we have had a fair amount of documentation provided to us by Dr. Stephenson on the other side, saying there is a need for this other kind of testing which is not being done at present. I am reluctant to reopen that debate when I hope the bulk of the members of the committee have made up their minds at this stage.

Miss Stephenson: They may have on the basis of the very strong opinions of the chemists and engineers who are strongly opposed to the concept of clinical testing, but human beings vary significantly from one to another. Their reactions to drugs vary quite significantly as well. A person who is ill may react differently to a combination of materials than one who is entirely well. The only rationale suggested here is there be at least some investigation, on a clinical trial basis, of every drug to be listed in our formulary, particularly those to be listed as interchangeable, to ensure they are interchangeable.

If we do not do that then I have difficulty with the suggestion they are interchangeable--real difficulty. My real concern is if that concern becomes wide enough, we may destroy whatever good these legislative acts would carry out, simply by ensuring that prescriptions are written only for those drugs with which people have had experience and nothing else. Interchangeability could die as a result of this. That worries me.

Mr. McGuigan: I am sympathetic to the concerns. Should we not be pressing the federal government to be doing the trials?

Miss Stephenson: No, because all they measure is--We could, if they were going to take over the entire drug distribution system in Canada. Do you want them to do that? All they do is approve their safety and purity and a certain degree of efficacy.

Mr. Jackson: They also stand alone. The issue here is interchanging them, which our government is determining to do. That is a different matter.

Mr. Chairman: Further debate? We have been through this a lot.

The committee divided on Miss Stephenson's amendment to clause 12(1)(b), which was negatived on the following vote:

Ayes

Baetz, Jackson, Leluk, Stephenson.

Nays

Cooke, D. S., McGuigan, Miller, G. I., Reville, Reycraft, Ward.

Ayes 4; nays 6.

Motion negatived.

Mr. Chairman: Clause 12(1)(c) reads "providing for the maximum amounts chargeable for interchangeable products (section 5)."

Any discusion on clause 12(1)(c)? No discussion?

I am reminded by legislative counsel that we amended section 5 so it no longer refers to "interchangeable products." We should therefore have the different wording there, I presume--"providing for the maximum amounts chargeable for drug products (section 5)."

Miss Stephenson: I think it is an inappropriate interpretation of the Gordon suggestion--it was going in one direction.

Mr. Chairman: The word "interchangeable" will be replaced by the word "drug." It is a friendly amendment to Mr. Ward's amendment. Any further discussion? Seeing none, we are voting on clause 12(1)(c), "providing for the maximum amounts chargeable for drug products (section 5)," replacing the word "interchangeable" with the word "drug." That is because of the way we already amended section 5.

Miss Stephenson: I have some difficulty with "maximum amounts chargeable." I thought we were providing for the "amounts chargeable." I guess it is "maximum." I do not know.

Mr. Chairman: We ended up using that word earlier.

Miss Stephenson: "Maximum"?

6:10 p.m.

Mr. Chairman: As I recall. If you look at clause 11(1)(e), for instance, it refers back to section 5, and that also starts with "maximum allowable charge."

Miss Stephenson: That says "maximum"? I did not notice that.

Mr. Chairman: I tried to draw attention to it back in section 5 and it was agreed that--

Any further discussion?

All those in favour of clause 12(1)(c), as amended, please indicate. Those opposed?

Clause 12(1)(c), as amended, agreed to.

Mr. Chairman: "(d) prescribing the circumstances under which more than the usual and customary dispensing fee may be charged and providing for the amount of that fee (subsection 5(3))." Does that still apply in terms of the appropriate subsections?

Ms. Baldwin: Hold on a moment.

Mr. Ward: Part of the difficulty with the section 12 amendments is that they relate to amendments to section 5, to Mr. Cooke's motion, which are not now incorporated into section 5. The numbering, then, is--

Mr. Chairman: So all we have is a potential numbering problem that we can leave to the legal counsel.

Ms. Baldwin: No. I believe clause 12(1)(d) refers back to a subsection the committee did not pass. Therefore, I recommend that the committee consider voting against clause (d), because as the bill now stands it does not mean a thing.

Mr. Chairman: This is an appropriate suggestion. Is it understood by the committee members? This will be one less thing to clear up in committee of the whole House.

Miss Stephenson: I thought there was a section that provided for a flexibility in that area under regulations.

Mr. Bernstein: That was in a motion to amend Mr. Cooke's motion, which was defeated.

Mr. Chairman: Understood?

All those in favour of clause 12(1)(d), please indicate. Those opposed?

Clause 12(1)(d) negatived.

Mr. Chairman: Moving on to subsection 12(2), regulations concerning the Ontario College of Pharmacists:

"Subject to the approval of the Lieutenant Governor in Council and with prior review by the minister, the council of the Ontario College of Pharmacists may make regulations,

"(a) prescribing the manner in which persons shall be informed of the right to request an interchangeable product (subsection 2(3))."

Understood? All those in favour of clause 12(2)(a), please indicate. Those opposed?

Clause 12(2)(a) agreed to.

Mr. Chairman: "(b) prescribing the information to be included in a

notice (subsection 4(2)) and the manner of posting a notice."

Any discussion? This will be left up to the college.

All those in favour of clause 12(2)(b), please indicate. Those opposed?

Clause 12(2)(b) agreed to.

Mr. Chairman: "(c) prescribing the manner of calculating the cost to an operator of a pharmacy of purchasing an interchangeable product (subsection 5a(4)."

That is the calculation of cost.

All those in favour, please indicate.

Clause 12(2)(c) agreed to.

Ms. Baldwin: That is referring to another section that the committee did not pass. Was it just defeated?

Mr. Chairman: No, it was not.

Ms. Baldwin: It does not mean anything as it stands because there is not a section that it refers back to.

Mr. Elston: What legislative counsel means to say is that there is no section that enables us to do what that regulation would request. There is no basis for the regulation.

Mr. Chairman: There are two options; you could either pass it and that would force some requirement to try to put something in when get to committee of the whole House or you can defeat it now and have somebody introduce it at committee of the whole at that time.

Miss Stephenson: It is an interesting exercise.

Mr. Chairman: If I might suggest, it makes more sense to defeat it and then have it reintroduced in committee of the whole. There is a motion to reconsider by Mr. Ward. All those in favour of clause 12(2)(c), please indicate. Only Mr. Cooke.

Clause 12(2)(c) negatived.

Mr. Chairman: "Clause 12(2)(d): authorizing dispensing a drug in less than the entire quantity prescribed and specifying the conditions under which that authority is to apply (subsection 7(2))." We did pass that subsection, I remember that.

Miss Stephenson: There are two sections related to "dispense as required" or "as written."

Mr. Chairman: This refers strictly to subsection 7(2) which is the written regulations which may authorize "dispensing a drug in less then the entire quantity." We then did pass Mr. Cooke's amendment after that which made reference to the specific drugs that may be listed.

Miss Stephenson: Which was producing a list--.

Mr. Chairman: There was a new subsection 7(3) that was passed earlier on.

Mr. Ward: But it says in subsection 7(3), "the regulations may designate specific drugs..."

Mr. Chairman: I am not sure that would be one you would actually want in the college's purview. That is up to you. We can deal with this one without that and then add a separate subsection to deal with subsection 7(3) if necessary. This is just referring to the reference in subsection 7(2). All those in favour of clause 12(2)(c) please indicate.

Clause 12(2)(c) agreed to.

Do we now need a clause (d) to refer back to Mr. Cooke's subsection 7(3) or do we not?

Ms. Baldwin: We just did clause (c) here, I am going to call this (da). It will end up being (d). You are quite right.

Mr. Chairman: Moved by Mr. Cooke, clause 12(2)(da): "designating specific drugs that are to be exempt from the application of subsection 7(1)," which is what 7(3) was about. Any discussion? All those in favour, please indicate.

Clause 12(2)(da) agreed to.

Mr. Chairman: We are now going on to clause 12(2)(e): "prescribing the information concerning cost to be provided on sale and how it is to be provided (section 8)." No discussion? That is just straightforward.

6:20 p.m.

Miss Stephenson: No, it is a silly statement, but that is all right.

Mr. Chairman: Nothing has stopped us from being silly in the past.

Miss Stephenson: It should simply be, "prescribing the manner of informing the customer of the cost of the drug," because that is what you are talking about.

Mr. Chairman: All those in favour of clause 2(e) as listed originally, please indicate. Those opposed?

Motion agreed to.

Mr. Chairman: Clause (f) reads:

"(f) requiring operators of pharmacies to retain specified records respecting their purchase of drugs for the purposes of this act and prescribing the period of time those records shall be retained."

Is it agreed that should be the college's responsibility?

All those in favour? Those opposed?

Motion agreed to.

Mr. Chairman: Agreed, Dr. Stephenson?

Miss Stephenson: Who determines which records must be kept? It is not in here.

Mr. Chairman: It requires the keeping of specified records and I suggest that is specific. That covers the right to specify the records as well, I think. You are right that it has not been alluded to anywhere else. It is as close as anywhere in that wording. I think that is implied.

Subsection 3 of section 12 reads:

"(3) Where the minister requests in writing that the council of the Ontario College of Pharmacists make, amend or revoke a regulation under subsection (2) and the council has failed to do so within 60 days after the request, the Lieutenant Governor in Council may make the regulation, amendment or revocation specified in the request."

Miss Stephenson: Without conversation with the college?

Mr. D. S. Cooke: It is exactly the same thing Mr. Grossman did a few years ago in the legislation for doctors with prior information for extra billing.

Mr. Jackson: Were you critical of Mr. Grossman?

Mr. D. S. Cooke: No, we were not.

Mr. Chairman: Counsel, the college does not seem to be too concerned about that from the body language one is witnessing here.

All those in favour of subsection 3, please indicate. Those opposed?

Motion agreed to.

Mr. Chairman: Subsection 4 of section 12 reads:

"(4) A regulation made under subsection (1) or (2) may be general or particular in its application."

All those in favour of subsection 4, please indicate. Those opposed?

Motion agreed to.

Mr. Chairman: All those in favour of section 12, as amended?

Section 12, as amended, agreed to.

On section 13:

Mr. Chairman: Are there amendments to this? Section 13 reads:

"(1) Clauses 113(1)(e) and (i) of the Health Disciplines Act, being chapter 196 of the Revised Statutes of Ontario, 1980, are repealed.

"(2) Section 155 of the said act is repealed.

"(3) Clause 158(2)(b) of the act is repealed."

Do we have an explanation as to what those sections are?

Hon. Mr. Elston: Section 155 provides for interchangeabilities. It is the one a lot of interchangeability items have been based on in the past.

Miss Stephenson: I would rather you retained that one and got rid of it in here here, because you--

Hon. Mr. Elston: The OPA just fainted, but that is fine. We will retain it if you want to vote against that section of repeal.

Miss Stephenson: I am not going to vote against it. Do not be silly. I just said I would rather--

Hon. Mr. Elston: What do you mean? You said you wanted--

Mr. Chairman: Order. We are doing so nicely.

Mr. Jackson: Are you going to fight with all the doctors?

Mr. Chairman: Whatever sections of the--

Miss Stephenson: What are clauses 113(1)(e) and (i)?

Mr. Bernstein: Those are definitions.

Miss Stephenson: Definitions of what?

Mr. Chairman: Someone is not pleased with what we have done.

Hon. Mr. Elston: That is right.

Mr. Chairman: Legal counsel knows. So does Mr. Bernstein.

Ms. Baldwin: If Mr. Bernstein has them, he should proceed.

Mr. Chairman: Mr. Bernstein, tell us.

Mr. Bernstein: Clause 113(1)(e) is the definition of "interchangeable pharmaceutical product," which means "a product containing a drug or drugs in the same amounts of the same active ingredients in the same dosage form as that directed by a prescription." It is a concept which has been incorporated in improved form in this bill.

Miss Stephenson: It is inappropriate to change the place. It is inadequate, that is all.

Mr. Chairman: Order.

Mr. Bernstein: Clause 113(1)(i) is simply a definition of "Parcost CDI," which has gone out the window.

Section 155 has been explained and clause 158(2)(b) authorizes the Lieutenant Governor in Council to prescribe the Parcost CDI for the purposes of that part of the Health Disciplines Act.

Interjection.

Mr. Chairman: It was a good aside, Mr. Ward, but unfortunately it will not get picked up. Is there any further debate on section 13? All those in favour? Opposed?

Section 13 agreed to.

Miss Stephenson: There should be a new liability clause inserted before section 14, that the liability for any pain, grief or agony under this act should lie at the door of the Minister of Health.

Hon. Mr. Elston: I will be responsible for both those sections.

Mr. Chairman: Is that your motion?

Miss Stephenson: Yes, that is my motion.

Mr. Chairman: Dr. Stephenson moves that liability for any pain, grief, agony or death as result of this act be laid at the door of the Minister of Health.

Miss Stephenson: I am not kidding. I wish I were joking; I am not. You are very cavalier about the health of the people of Ontario.

Mr. Chairman: All those in favour of Dr. Stephenson's motion? Those opposed?

Motion negatived.

On section 14:

Mr. Chairman: "This act comes into force on a day to be named by proclamation of the Lieutenant Governor."

All those in favour, please indicate. Opposed?

Section 14 agreed to.

On section 15:

Mr. Chairman: "The short title of this act is the Prescription Drug Cost Regulation Act, 1986."

All those in favour, please indicate. Opposed?

Section 15 agreed to.

Mr. Chairman: As I recall, we had one open section, that is, section 1 on definitions, to see how we would deal with things later on in the bill. That was "best available price." Are people happy with what we have done since in terms of that definition? Are you going to allow it to go?

Miss Stephenson: I am trying to recall whether there was agreement to stand down the section that required within definitions that a designated drug is a drug for which the manufacturer has provided to the minister a complete list of all the ingredients.

Mr. Ward: We voted on that three times.

Miss Stephenson: No, we did not vote three times. I am trying to remember whether you stood it down yesterday or whether you voted on it, and I cannot recall. The argument I heard was that--

Mr. Ward: That is right. Bette stood it down.

Mr. Chairman: I think you stood it down this time rather than leaving it in as we had before and voting it down, as occurred in Bill 54. You stood it down to see what would happen later on in the bill.

Interjections.

Mr. Chairman: I am trying to keep some order here. We are so close to completing this that we may lose control and not complete it. These were the amendments, when they were finally reworked, which we have just seen showing up in the regulations under section 12, the three subsections Dr. Stephenson mentioned at that stage. Am I correct on that?

Miss Stephenson: No.

Mr. Chairman: This is different from that.

Miss Stephenson: That related to designation, which requires of the manufacturer the action of providing information to the minister regarding all the ingredients in any of the drugs to be listed within the formulary.

Mr. Chairman: Section 1 is reopened. Why do you not move what you wish to move?

Miss Stephenson moves that:

"'designated' means a drug or substance which is approved for listing in the Ontario Drug Benefit Formulary and for which the manufacturer has provided to the minister a complete list of all ingredients therein, including vehicles, excipients, inert substances, colouring, flavouring materials, etc., and for which any change in the sourcing of any of the above ingredients must be reported by the manufacturer to the minister forthwith."

We have had a fair amount of debate on this one in the past.

Miss Stephenson: There is increasing concern about this business of excipients in the contents.

Mr. Chairman: All those in favour of Dr. Stephenson's motion, please indicate. Those opposed?

Motion negatived.

Section 1, as amended, agreed to.

Mr. Chairman: The legislative counsel wants us to clean up our image and cross out a reference that does not make sense in Bill 54. Will you listen to her for a second?

Mr. Jackson: We had several sections where we were going to do that. Housekeeping amendments.

Ms. Baldwin: This is just a reference back to a subsection number.

It is Bill 54, clause 11(1)(ha), prescribing the manner of calculating the cost to an operator of a pharmacy of purchasing a listed drug product for the purpose of subsection 5a(3) or clause 11(2)(c). I want to cross out the "11(2)(c)" because that no longer refers to cost.

Mr. Chairman: Mr. Jackson moves that clause 11(1)(ha) of Bill 54 be amended by striking out the reference to "clause 11(2)(c)."

Motion agreed to.

Bill 54, as amended, agreed to.

Bill ordered for committee of the whole House.

Bill 55, as amended, agreed to.

Bill ordered for committee of the whole House.

Mr. Chairman: We have completed two bills. We will start on Bill 30 on Thursday with the minister's statement and move right into deputations following that.

Hon. Mr. Elston: I have a two-hour windup.

Mr. Chairman: The minister has a two-hour windup for which none of you has to remain.

Miss Stephenson: Thank you.

The committee adjourned at 6:31 p.m.